

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0329**

Raymond Clyde Robideau, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 31, 2023
Affirmed
Larkin, Judge**

Anoka County District Court
File No. 02-CR-08-1256

Raymond C. Robideau, Rush City, Minnesota (pro se appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brad Johnson, Anoka County Attorney, Kelsey R. Kelley, Assistant Anoka County Attorney, Anoka, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Wheelock, Judge; and Kirk,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the district court's denial of his motion for sentence correction, arguing that the district court erred by treating his motion as a request for postconviction relief. Although the district court erred by construing appellant's motion as one for postconviction relief, it correctly determined that appellant was not entitled to relief on the merits. We therefore affirm.

FACTS

Appellant Raymond Clyde Robideau was convicted of second-degree murder after stabbing his girlfriend to death in her home. *State v. Robideau*, 783 N.W.2d 390, 394-95 (Minn. App. 2010), *rev'd*, 796 N.W.2d 147 (Minn. 2011). The state sought an aggravated sentence, and Robideau waived his right to a jury trial on the issue of aggravating factors. *Id.* at 397. The district court found that aggravating factors justified an aggravated sentence and imposed 460 months' imprisonment, a 93-month upward departure from the presumptive sentencing range. *Id.* The district court concluded that an upward departure was proper because Robideau treated the victim with particular cruelty and because the victim's 13-year-old son was present in the home during the homicide. *Id.* at 402.

Robideau appealed to this court, and we affirmed his conviction and sentence. *Id.* at 394-95. We concluded that the district court erroneously identified particular cruelty as a proper aggravating factor, but we held that the presence of the victim's son was a valid ground for the sentencing departure. *Id.* at 403-04.

The supreme court granted review on the sentencing issue and reversed and remanded, reasoning that the presence of the victim's son was not a valid departure ground because he had no sensory perception of the murder as it occurred. *Robideau*, 796 N.W.2d at 148. The supreme court held that "the aggravating factor of an offense committed in the presence of a child is limited to those situations where the child sees, hears, or otherwise witnesses some portion of the commission of the offense in question." *Id.* at 152. However, the supreme court noted that the commission of a murder "in such a way that the child is intended to be the first to discover the body of a murdered parent may warrant treatment as a new aggravating factor." *Id.* at 152 n.3.

On remand, the state once again moved for a durational sentencing departure, arguing that an aggravating factor existed because Robideau intended the victim's son to be the first to discover the body of his murdered mother. The district court found that Robideau intended the victim's son to find his mother's body and that this circumstance made the crime significantly more serious than other second-degree murder offenses. Thus, the district court once again concluded that there were grounds for a departure and sentenced Robideau to 460 months' imprisonment.

Robideau appealed, and this court affirmed the sentence, holding that "[i]ntentionally leaving the body of a murder victim to be discovered by the minor child of the victim justifies an upward durational departure from the presumptive sentence under the sentencing guidelines." *State v. Robideau*, 817 N.W.2d 180, 182 (Minn. App. 2012), *rev. denied* (Minn. Sept. 25, 2012). We concluded that the sentencing departure was both

legally and factually supported. *Id.* at 186-88. Robideau petitioned the supreme court for review, and the supreme court denied Robideau's petition.

In January 2023, approximately ten years after his prior appeal, Robideau moved the district court to correct his sentence, arguing that he was denied the right to have a jury determine whether aggravating sentencing factors existed to support the sentencing departure. The district court deemed Robideau's motion a postconviction petition and denied it as untimely. But the district court nonetheless considered and rejected Robideau's motion on the merits, finding that he had "explicitly waived his right to a jury trial on sentencing issues."

Robideau appeals.

DECISION

Robideau challenges the district court's characterization of his motion to correct his sentence as a postconviction petition. "We review a district court's denial of a motion to correct a sentence for an abuse of discretion." *Munt v. State*, 920 N.W.2d 410, 414 (Minn. 2018). We will reverse the district court only if it has "exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Evans v. State*, 925 N.W.2d 240, 242 (Minn. 2019) (quotation omitted).

Robideau moved to correct his sentence pursuant to Minn. R. Crim. P. 27.03, subd. 9, which states that a court "may at any time correct a sentence not authorized by law." Although a defendant may request correction of an unauthorized sentence under rule 27.03, subdivision 9, a defendant may not use that rule to challenge his criminal conviction and

thereby “circumvent the procedural requirements of the postconviction statute.” *Johnson v. State*, 877 N.W.2d 776, 778 (Minn. 2016). A district court may therefore construe a motion under Minn. R. Crim. P. 27.03, subd. 9, as a postconviction petition if the motion implicates more than the defendant’s sentence. *Id.* at 779.

In support of his motion for sentence correction, Robideau cited *Blakely v. Washington*, 542 U.S. 296 (2004), and argued that he was denied the right to have a jury determine whether aggravating sentencing factors existed to support his aggravated sentence. In *Blakely*, the United States Supreme Court held that a court may not impose a sentence above the statutory maximum on the basis of facts not found by a jury, because doing so would violate the defendant’s right to trial by jury. 542 U.S. at 303. In *Reynolds v. State*, the Minnesota Supreme Court held that a sentence that violates *Blakely* is a sentence that is not authorized by law under Minn. R. Crim. P. 27.03, subd. 9. 888 N.W.2d 125, 130 (Minn. 2016). Because Robideau raised a *Blakely* challenge to his sentence, the district court erred by treating Robideau’s motion as a request for postconviction relief.

Although the district court improperly denied Robideau’s request for sentence correction as an untimely request for postconviction relief, the court nonetheless addressed the merits of Robideau’s claim and concluded that he had waived his right to a jury trial on the issue of aggravating factors. Indeed, in his prior appeal to this court, Robideau raised the same argument that is raised in this appeal: Robideau asserted that because the district court’s “departure basis was not included in the original notice of intent to seek an aggravated sentence,” “he did not waive his jury trial right on this issue.” *Robideau*, 817 N.W.2d at 188. We rejected Robideau’s argument because the state’s original notice of

intent to seek an aggravated sentence contained an aggravated factor substantially similar to the basis ultimately relied on by the district court in that both involved Robideau's act of leaving the murder victim's body in a location where her young son would be the first to discover it. *Id.* at 188-89. We ultimately held that "Robideau waived his *Blakely* right to a jury trial" on the aggravating factor on which the district court relied in resentencing him. *Id.* at 189.

"The law of the case doctrine functions to bar issues that were previously considered and denied in the same case," and that doctrine applies to motions under Minn. R. Crim. P. 27.03, subd. 9, "when the claim underlying the motion was previously denied" on appeal. *Smith v. State*, 974 N.W.2d 576, 581-82 (Minn. 2022). Given this court's prior decision that Robideau waived his *Blakely* right to a jury trial, Robideau is barred from relitigating that issue.

Robideau suggests that the supreme court's reversal and remand somehow invalidated his *Blakely* waiver, but the validity of Robideau's *Blakely* waiver was never disputed on appeal to the supreme court. The supreme court granted review solely on the issue of whether "the aggravating factor of an offense committed in the presence of a child was a valid ground for the upward departure." *Robideau*, 796 N.W.2d at 148. Moreover, the supreme court did not remand for imposition of a presumptive sentence. *Id.* at 152.

In sum, because Robideau provided a valid *Blakely* waiver, his sentence was not unauthorized and the district court did not abuse its discretion by declining to "correct" it. Thus, the district court's erroneous treatment of Robideau's motion for sentence correction as a request for postconviction relief was harmless, and it does not provide a basis for relief.

See Minn. R. Crim. P. 31.01 (“Any error that does not affect substantial rights must be disregarded.”); *Greer v. State*, 973 N.W.2d 918, 924 (Minn. 2022) (holding that even if the district court erred in concluding that the defendant’s right to allocution could not be raised in a motion to correct a sentence under Minn. R. Crim. P. 27.03, subd. 9, the alleged error was harmless because the defendant was not prejudiced).

Affirmed.