

*This opinion is nonprecedential except as provided by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
A23-0876**

Steven Todd Parker, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 29, 2024
Affirmed
Wheelock, Judge**

Dakota County District Court
File No. 19-K1-05-002937

Steven Todd Parker, Stillwater, Minnesota (pro se appellant)

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

Kathryn M. Keena, Dakota County Attorney, Jessica A. Bierwerth, Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Gaïtas, Presiding Judge; Smith, Tracy M., Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this fourth appeal from his sentences, appellant challenges the district court's denial of his motion to correct his sentences, arguing that (1) the district court erroneously construed his challenge to his sentences as an untimely postconviction petition, (2) his

career-offender sentences are unlawful because he does not have the required number of prior sequential felony convictions, (3) the sentencing court erred by imposing consecutive sentences, and (4) the sentencing court erred in its calculation of his criminal-history score when determining his second consecutive sentence. We affirm.

FACTS

Following a jury trial in 2007, appellant Steven Todd Parker was convicted of four offenses based on a string of incidents that occurred in 2005: first-degree burglary of an occupied dwelling in violation of Minn. Stat. § 609.582, subd. 1(a) (2004); second-degree burglary in violation of Minn. Stat. § 609.582, subd. 2(a) (2004); theft of a motor vehicle in violation of Minn. Stat. § 609.52, subd. 2(17) (2004); and fleeing from a peace officer by means of a motor vehicle in violation of Minn. Stat. § 609.487, subd. 3 (2004). After the jury found Parker guilty of all charges, the court held a bifurcated sentencing trial to determine whether it could impose enhanced sentences pursuant to the career-offender statute, Minn. Stat. § 609.1095, subd. 4 (Supp. 2005). That statute allows for sentences up to the statutory maximum when a defendant has five or more prior felony convictions and the present offense is a felony committed as part of a pattern of criminal conduct. Minn. Stat. § 609.1095, subd. 4.

Thus, the issues for the jury were (1) whether Parker had five or more prior felony convictions and (2) whether Parker's present offense was a felony that was committed as part of a pattern of criminal conduct. The state presented eight court files to the jury evidencing ten prior felony convictions for burglary, other property-related offenses, and

fleeing from police.¹ The jury found that the elements of the career-offender statute were satisfied. After the jury's determination, the district court questioned Parker about his prior felonies, and Parker admitted to two additional felony convictions. The sentencing court imposed consecutive statutory-maximum sentences on each of the four convictions based on Parker's career-offender status and other aggravating factors.

Parker appealed his sentences. *State v. Parker*, No. A07-0968, 2008 WL 2965925 (Minn. App. Aug. 5, 2008) (*Parker I*). We remanded for resentencing with instructions to impose a concurrent sentence for the theft-of-motor-vehicle conviction and to limit the reasons for a sentencing departure to Parker's career-offender status because the other reasons had either not been tried to the jury or were not appropriate bases for departure. *Id.* at *9-10. Parker had also argued that all of his sentences should have been imposed concurrently because consecutive sentencing is not permitted "when the court has given an upward durational departure on any of the current offenses." *Id.* at *9 n.4 (quoting Minn. Sent'g Guidelines cmt. II.F.04 (Supp. 2005)). We rejected this argument because Parker's offenses involved multiple victims. *Id.*

On remand, the sentencing court imposed permissive consecutive sentences for the first-degree-burglary and second-degree-burglary convictions at the respective statutory maximums of 240 months and 120 months, totaling 360 months, and imposed the other two sentences concurrently. The sentencing court cited only Parker's career-offender

¹ The ten convictions were entered in 1983, 1989, 1990, 1992, 1995, 1999, and 2001.

status as the reason for imposing the statutory-maximum sentences, in accordance with our instructions.

Parker appealed his amended sentences in 2009 on the grounds that “the sentences imposed were excessive because the only aggravating factor the jury found was that he is a career offender” and “sentencing as a career offender punishes him for his record instead of the manner in which he committed” the current offenses. *State v. Parker*, No. A09-354, 2009 WL 3736120, at *2 (Minn. App. Nov. 10, 2009) (*Parker II*), *rev. denied* (Minn. Jan. 19, 2010). We affirmed, reasoning that the career-offender statute “does not require the fact-finder to consider additional aggravating factors related to the present offense.” *Id.* at *2.

Parker challenged his sentence again six years later, and we affirmed the district court’s determination that his filing was an untimely postconviction petition under Minn. Stat. § 590.01, subd. 4(a)(2) (2012), rather than a motion to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9, because Parker did “not argue that the length or terms of his sentence are contrary to applicable statutes or caselaw.” *Parker v. State*, No. A14-2193, 2015 WL 4994540, at *1 (Minn. App. Aug. 24, 2015) (*Parker III*), *rev. denied* (Minn. Oct. 28, 2015).

Parker now challenges his sentences for the fourth time. Parker argued to the district court that the duration of his sentences was unlawful because he did not have sufficient prior sequential felony convictions to be sentenced as a career offender and that the sentencing court failed to follow the sentencing guidelines when calculating his criminal-history score for purposes of determining the duration of his second consecutive

sentence. The district court addressed and rejected Parker's criminal-history-score argument because the durations of his sentences were computed according to the career-offender statute, not the sentencing guidelines. The district court determined that the portion of Parker's filing based on the application of the career-offender sentencing statute was an untimely postconviction petition rather than a motion to correct his sentences, and it did not address that portion of his motion.

Parker appeals.

DECISION

Parker makes three arguments on appeal. First, he asserts that the district court erred by construing his challenge to career-offender sentencing as an untimely postconviction petition under Minn. Stat. § 590.01, subd. 4(a)(2) (2022), arguing that his filing was a motion to correct his sentences pursuant to Minn. R. Crim. P. 27.03, subd. 9, because his challenge does not implicate his convictions. Second, he argues that his career-offender sentences are unlawful because he does not have the required number of prior sequential felony convictions. Third, he argues that the sentencing court erred by imposing his sentences consecutively and, in the alternative, that the sentencing court erred by not using a criminal-history score of zero to calculate his second consecutive sentence. We address Parker's arguments in turn.

I. The district court erred when it determined that the portion of Parker's filing that challenged his career-offender sentences was an untimely postconviction petition.

Parker first argues that the district court erred by construing the portion of his filing challenging his career-offender sentence as a postconviction petition. There are two ways

to collaterally attack a sentence: (1) by filing a motion to correct a sentence under the Minnesota Rules of Criminal Procedure or (2) by filing a petition for postconviction relief under the Minnesota Statutes. *Washington v. State*, 845 N.W.2d 205, 210 (Minn. App. 2014). The Minnesota Rules of Criminal Procedure provide that “[t]he court may at any time correct a sentence not authorized by law.” Minn. R. Crim. P. 27.03, subd. 9. Any other request for postconviction relief must be filed under Minnesota Statutes chapter 590 no more than two years after a conviction becomes final unless an exception to the time limit applies. Minn. Stat. § 590.01, subds. 1, 4 (2022). Because Parker filed the motion here more than two years after the postconviction statute’s deadline and does not argue that any exception applies, a postconviction petition would have been time-barred. We therefore must first determine whether his filing falls within the scope of rule 27.03.

To determine whether a filing is a motion to correct a sentence or a postconviction petition, the district court must “look to the pleadings and the relief sought in order to determine the nature of [the] claim.” *State v. Coles*, 862 N.W.2d 477, 480 (Minn. 2015). The substance of the request controls rather than the label a filing is given. *Bolstad v. State*, 966 N.W.2d 239, 243 (Minn. 2021). We interpret rule 27.03, subdivision 9, narrowly, *Coles*, 862 N.W.2d at 480, and “[i]f the motion ‘implicates more than simply [the] sentence,’ it is properly treated as a postconviction petition.” *Bolstad*, 966 N.W.2d at 243 (quoting *Coles*, 862 N.W.2d at 482). But if it “challenges a sentence on the grounds that the sentence is contrary to an applicable statute or other applicable law,” it is properly treated as a motion to correct a sentence. *Reynolds v. State*, 874 N.W.2d 257, 260, 261 (Minn. App. 2016) (quotation omitted) (holding that a motion was proper under rule 27.03

when it challenged a sentence on constitutional grounds), *aff'd*, 888 N.W.2d 125 (Minn. 2016); *see also State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007) (holding the same for a motion challenging a sentence based on an incorrect criminal-history score); *State v. Amundson*, 828 N.W.2d 747, 751 (Minn. App. 2013) (holding the same for a motion challenging an upward departure based solely on a plea agreement).

The standard of review that appellate courts apply to a district court's determination of whether a filing is a motion to correct a sentence or a postconviction petition is unsettled. *Bolstad*, 966 N.W.2d at 243. However, the general principles of our review still apply. "We review the district court's denial of a motion to correct a sentence [under Minn. R. Crim. P. 27.03, subd. 9,] for an abuse of discretion. Specifically, we review the district court's legal conclusions de novo and its factual findings under the clearly erroneous standard." *Townsend v. State*, 834 N.W.2d 736, 738 (Minn. 2013) (citation omitted).

To determine whether the district court erred by construing Parker's challenge to his career-offender sentences as a postconviction petition, we look to the substance of Parker's argument. Parker asserts that he did not have the requisite number of prior felony convictions to receive maximum prison sentences under the career-offender statute. The statute provides:

Whenever a person is convicted of a felony, and the judge is imposing an executed sentence based on a Sentencing Guidelines presumptive imprisonment sentence, the judge may impose an aggravated durational departure from the presumptive sentence up to the statutory maximum sentence if the factfinder determines that the offender has five or more

prior felony convictions and that the present offense is a felony that was committed as part of a pattern of criminal conduct.

Minn. Stat. § 609.1095, subd. 4. “The career-offender statute applies only when an offender has five or more prior felony convictions, and a sentence based on an incorrect determination that an offender has the required number of prior felony convictions is an illegal sentence.” *State v. Franklin*, 847 N.W.2d 63, 66 (Minn. App. 2014), *aff’d*, 861 N.W.2d 67 (Minn. 2015). “Consequently, just as a defendant may not waive review of his criminal-history-score calculation, [a defendant] may not waive review of whether he has five or more prior felony convictions.” *Id.*

The district court construed Parker’s challenge to his career-offender sentences as an untimely postconviction petition because it determined that the motion challenged the “basis of the verdict and conviction that [Parker] is a career offender.” But being a career offender is not a crime in and of itself—one cannot be charged with or convicted of being a career offender. Rather, “the career-offender statute establishes a legislatively-created ground for departure” in sentence durations. *State v. Mitchell*, 687 N.W.2d 393, 399 (Minn. App. 2004) (quotation omitted), *rev. granted* (Minn. Dec. 22, 2004) *and ord. granting rev. vacated* (Minn. Dec. 12, 2005). Because Parker argues that he did not have the requisite number of prior felony convictions to justify application of the career-offender statute to enhance his sentences, his motion is a proper rule 27.03 motion to correct his sentences. We thus conclude that the district court erred by determining that the portion of his motion based on whether the career-offender statute should have applied to him was an untimely postconviction petition.

The district court did not address the merits of Parker’s challenge to his career-offender sentences; however, we exercise our discretion to address his arguments in the interest of judicial economy. Although we generally do not review issues that were not considered by the district court, *State v. Diamond*, 890 N.W.2d 143, 148 (Minn. App. 2017), *aff’d*, 905 N.W.2d 870 (Minn. 2018), we may review any matter in the interests of justice, *see* Minn. R. Crim. P. 28.02, subd. 11. We have reviewed such issues when a defendant challenged the legality of their sentence because it is an issue that cannot be waived, *Franklin*, 847 N.W.2d at 65-66, and when the issue is “purely legal in nature” and would not result in prejudice to either party, *Aery v. State*, 989 N.W.2d 363, 366 n.3 (Minn. App. 2023). We have also done so in the interest of judicial economy when the issue would arise on remand. *See, e.g., Montanaro v. State*, 802 N.W.2d 726, 731 (Minn. 2011); *Edstrom v. State*, 326 N.W.2d 10, 10 (Minn. 1982); *State v. Halvorson*, 506 N.W.2d 331, 337 (Minn. App. 1993). All of these principles apply here. Parker challenges the legality of his sentences. And we can address each of his arguments, which would inevitably arise on remand, on a legal, rather than factual, basis.

Moreover, we need not reverse a correct decision by the district court simply because it is based on incorrect reasons. *State v. Eichers*, 840 N.W.2d 210, 216 (Minn. App. 2013), *aff’d on other grounds*, 853 N.W.2d 114 (Minn. 2014); *see State v. Fellegly*, 819 N.W.2d 700, 707 (Minn. App. 2012) (“We may affirm the district court on any ground, including one not relied on by the district court.”), *rev. denied* (Minn. Oct. 16, 2012). We therefore address each of Parker’s arguments in turn.

II. The district court properly sentenced Parker as a career offender.

We review a district court’s interpretation of sentencing statutes and procedural rules de novo. *State v. Amundson*, 828 N.W.2d 747, 752 (Minn. App. 2013). “We conduct a de novo assessment of the district court’s decision as to whether a valid departure ground exists, relying on the factual findings that support the decisions.” *State v. Weaver*, 796 N.W.2d 561, 567 (Minn. App. 2011). And we review those factual findings for whether they are supported by the record. *Id.*

Parker contends that he had only three prior qualifying convictions because (1) his pre-1995 and 2005 felony convictions cannot be counted to calculate criminal-history points under the Minnesota Sentencing Guidelines because some of the convictions decayed and others should have been counted as half-points and rounded down and (2) his four 1999 felony convictions were not separate and sequential, and thus, they qualify as only one prior conviction pursuant to *State v. Huston*, 616 N.W.2d 282 (Minn. App. 2000). He claims that he is therefore entitled to the guidelines’ presumptive sentence durations for the convictions in the underlying matter here. We address only Parker’s first argument as the facts are undisputed and the result is dispositive.²

“Decay” refers to the sentencing guidelines’ rule prohibiting the counting of convictions over 15 years old in the computation of criminal-history scores. *See Vickla v. State*, 793 N.W.2d 265, 271 (Minn. 2011). Decay does not apply to the counting of prior

² Even if we concluded that Parker’s second argument succeeds, his record would still include more than five prior felony convictions—he would have seven prior felony convictions—and the career-offender statute would apply.

convictions under the career-offender statute. *Id.* (observing that “the 15-year decay factor in the Sentencing Guidelines applicable to a presumptive sentence determination is not referenced in the repeat-felony-offender statute”). Compare Minn. Sent’g Guidelines II.B.1.e (Supp. 2005) (prohibiting counting convictions toward criminal-history scores “if a period of fifteen years has elapsed since the date of discharge from or expiration of the sentence, to the date of the current offense”), with Minn. Stat. § 609.1095 (Supp. 2005) (including no decay provisions). Similarly, while Minnesota Sentencing Guideline II.B.1.a (Supp. 2005) provides for half-points for certain offenses and Minnesota Sentencing Guidelines comment II.B.101 (Supp. 2005) provides for rounding, Minn. Stat. § 609.1095 contains no similar provisions.

Therefore, the sentencing court was not required to consider whether any of Parker’s prior convictions had decayed or were subject to rounding, and it properly considered the pre-1995 convictions and determined that he had sufficient prior qualifying convictions to apply the career-offender statute. We therefore conclude that the sentencing court did not err by sentencing Parker as a career offender.

III. Parker’s challenge to consecutive sentencing has already been decided.

Parker next asserts that the sentencing court erred by imposing consecutive sentences, arguing that Minnesota Sentencing Guidelines comment II.F.04 prohibits his consecutive sentences because the sentencing court also applied an upward durational departure. “The law of the case doctrine functions to bar issues that were previously considered and denied in the same case,” and the 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). In 2008, we considered and rejected Parker’s challenge to consecutive sentencing in his direct appeal of his original sentences. *Parker I*, 2008 WL 2965925, at *9 n.4. Because this issue has already been decided, we do not reconsider it here.

IV. The district court did not err by determining that the duration of Parker’s second consecutive sentence was properly computed according to the career-offender statute rather than the guidelines grid.

Finally, Parker asserts that the district court erred by determining that the sentencing court was not required to use the sentencing guidelines to compute the duration of his second consecutive sentence. He argues that because his sentences were imposed consecutively, he was entitled to a guidelines-range sentence duration for his second consecutive sentence, which should have been computed using a criminal-history score of zero. We are not persuaded.

First, as to Parker’s entitlement to a guidelines-range sentence duration, the district court determined that the sentencing court was not required to compute the duration of the second consecutive sentence according to the guidelines because Parker was sentenced as a career offender. Parker’s criminal-history score factored into his sentences only in that the court may not impose a sentence under the career-offender statute unless the court “is imposing an executed sentence based on a Sentencing Guidelines presumptive imprisonment sentence.” Minn. Stat. § 609.1095, subd. 4. Here, it is undisputed that Parker’s first sentence for first-degree burglary was a presumptive imprisonment sentence

under the guidelines because the offense carried a severity level of six and Parker's initial criminal-history score was at least six. *See* Minn. Sent'g Guidelines IV-V (Supp. 2005).³

Second, as to Parker's criminal-history score and his consecutive sentence for second-degree burglary, the sentencing guidelines mandate that when imposing a permissive consecutive sentence, "a zero criminal history score . . . shall be used in determining the presumptive *duration*." Minn. Sent'g Guidelines II.F (Supp. 2005) (emphasis added). The guidelines do not state that a zero criminal-history score must be used to determine the presumptive *disposition*. Because the sentencing court used Parker's criminal-history score to determine whether the career-offender statute's presumptive-disposition requirement was met for his second consecutive sentence, *see* Minn. Stat. § 609.1095, subd. 4, the rule mandating the use of a zero criminal-history score to determine the presumptive guidelines duration did not apply. Thus, for Parker's second consecutive sentence, his criminal-history score was still six or more.

Second-degree burglary carries a severity level of five, Minn. Sent'g Guidelines V, which results in a presumptive imprisonment sentence for an offender with six or more criminal-history points, Minn. Sent'g Guidelines IV. Because the presumptive disposition was imprisonment, the sentencing court was permitted to calculate the duration of Parker's second consecutive sentence using the career-offender statute rather than the guidelines grid. Therefore, the sentencing court did not err by using a criminal-history score of six

³ The sentencing court calculated Parker's initial criminal-history score as 14. Parker argues that he had only six criminal-history points, but whether his score was 14 or six is immaterial because six is the maximum criminal-history score contemplated by the guidelines. *See* Minn. Sent'g Guidelines IV.

when determining the presumptive dispositions for both of Parker's consecutive sentences. And the district court did not err by rejecting Parker's challenge to the sentencing court's use of his criminal-history score to determine his second consecutive sentence.

In sum, because the sentencing guidelines and career-offender statute authorize the sentences that the sentencing court imposed, which included consecutive statutory-maximum sentences, the sentencing court did not err. Therefore, although the district court erred by construing portions of Parker's motion as an untimely postconviction petition rather than a motion to correct his sentences, that error was harmless, and we affirm the district court's determination that Parker's sentences are not unlawful.

Affirmed.