

*This opinion is nonprecedential except as provided by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
A23-0955**

Jonathan Nicholas Turner, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 16, 2024
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-10-3364

Jonathan Nicholas Turner, Faribault, Minnesota (self-represented appellant)

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

Mary F. Moriarty, Hennepin County Attorney, Anna R. Light, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Segal, Chief Judge; and
Connolly, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant challenges the postconviction court's denial of his motion to correct an
unauthorized sentence under Minn. R. Crim. P. 27.03, subd. 9, arguing that it abused its

discretion by determining that he was not entitled to jail credit for time he spent incarcerated on a separate offense. We affirm.

FACTS

In 2003, appellant Jonathan Nicholas Turner ambushed, shot, and killed Marcus Dortch. Appellant remained the prime suspect throughout the initial investigation. The police obtained statements from three witnesses and an informant that implicated appellant in the murder. However, each of the witnesses either provided inconsistent statements to investigators or failed to identify appellant definitively as the perpetrator. Additionally, appellant was tried for the murder of Javon Spencer, the informant's brother, in a separate case.¹ In 2005, respondent State of Minnesota declined to charge appellant for Dortch's murder after determining that it had insufficient evidence to prosecute the case.

Three years later, police made a breakthrough when appellant's former roommate, I.H., informed police that appellant had confessed to committing the 2003 murder. In addition to living with appellant at the time, I.H. had provided the state with reliable information in previous cases and had no obvious bias against appellant. After I.H. provided his statement to the police, the state charged appellant with two counts of first-degree murder. A jury convicted appellant of both counts, and the district court sentenced appellant to life in prison. Appellant subsequently appealed his convictions directly to the Minnesota Supreme Court.

¹ The jury was unable to reach a verdict in this case, resulting in a mistrial, and the state reserved the right to retry appellant.

While appellant's direct appeal was pending, the parties reached a plea agreement in which the state would vacate appellant's first-degree-murder convictions in exchange for appellant dismissing his appeal and pleading guilty to second-degree murder under Minn. Stat. § 609.19 (2002). As part of the agreement, the state also agreed not to retry appellant for Spencer's murder. After accepting the agreement, the district court sentenced appellant to 359 months in prison. Based on the calculation offered by appellant's counsel, the district court awarded appellant 1,738 days of jail credit, reflecting the period from appellant's arrest to the day of his guilty plea and sentencing.

After filing four petitions for postconviction relief,² appellant filed his first of three motions to correct an unauthorized sentence in 2021. In his motion, appellant argued that, because the state had "probable cause" to charge him before 2008, he should receive additional jail credit beyond that provided under the plea agreement. In a November 2021 order, the postconviction court denied appellant's motion, noting that the probable-cause test relied upon by appellant had been replaced by the *Clarkin* standard, and that under

² After the postconviction court denied appellant's initial petition for postconviction relief, appellant filed his second petition in 2015, arguing for withdrawal of his guilty plea, that his counsel was ineffective, and that newly discovered evidence supported his innocence. The postconviction court denied appellant's petition, and we affirmed. *Turner v. State*, No. A15-1822, 2016 WL 3659267 (Minn. App. July 11, 2016), *rev. denied* (Minn. Sept. 28, 2016). Appellant then filed another petition for postconviction relief, again arguing for plea withdrawal and claiming that newly discovered evidence supported his innocence. The postconviction court denied appellant's petition. In 2019, appellant filed his fourth petition for postconviction relief, arguing that his guilty plea was invalid, that his counsel was ineffective, that the state committed prosecutorial misconduct, and that newly discovered evidence supported his innocence. The postconviction court denied the petition, and we affirmed. *Turner v. State*, No. A20-0989, 2021 WL 1525221 (Minn. App. Apr. 13, 2021), *rev. denied* (Minn. June 29, 2021).

Clarkin, appellant failed to show that the state had sufficient evidence to prosecute its case with a “reasonable likelihood” of convicting him before 2008. *See State v. Clarkin*, 817 N.W.2d 678, 689 (Minn. 2012).

The following year, appellant filed a nearly identical motion to correct his sentence, except that appellant cited to *Clarkin* rather than the outdated probable-cause standard. Relying on the analysis from its November 2021 order, the postconviction court again denied appellant’s motion. Appellant initiated the current action in April 2023, which represents his seventh challenge to his conviction or sentence and his third consecutive motion seeking additional jail credit. Appellant also requested an in-camera review of Martino Smith’s jailhouse-visitor logs, arguing that the records would demonstrate that the state improperly delayed charging appellant. Smith was an informant who had named appellant as a suspect in the separate Spencer murder case. The postconviction court again relied on its November 2021 analysis to deny both appellant’s motion and his request for an in-camera review. This appeal follows.

DECISION

Appellant argues that the postconviction court abused its discretion by failing to award him jail credit for time he spent incarcerated on separate offenses between 2005 and 2008, when the state charged him with the 2003 murder of Marcus Dortch. We are not persuaded.

Under Minn. R. Crim. P. 27.03, subd. 9, postconviction courts may correct any sentence “not authorized by law.” A sentence is unauthorized if it is contrary to the applicable law or sentencing statutes. *State v. Schnagl*, 859 N.W.2d 297, 301 (Minn. 2015).

Ordinarily, criminal defendants are only entitled to jail credit for time spent in custody “in connection with the offense” being sentenced. Minn. R. Crim. P. 27.03, subd. 4(B). However, a defendant may receive credit for time spent in custody on a separate offense before being charged with the sentenced offense when (1) the state completes its investigation in a manner that does not suggest manipulation by the state and (2) the state “has probable cause and sufficient evidence to prosecute” the defendant with a “reasonable likelihood” of obtaining a conviction. *Clarkin*, 817 N.W.2d at 689. Appellant carries the burden to establish that he is entitled to jail credit from 2005 to 2008. *See State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008).

Appellate courts review a postconviction court’s denial of a motion to correct an unauthorized sentence for an abuse of discretion. *Evans v. State*, 880 N.W.2d 357, 359 (Minn. 2016). A postconviction court abuses its discretion by making clearly erroneous factual findings or basing its ruling on an erroneous view of the law. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017).

I. The postconviction court did not abuse its discretion by denying appellant’s motion to correct his sentence.

Appellant contends that the postconviction court abused its discretion by applying an incorrect legal standard and by determining that the state had insufficient evidence to charge appellant until 2008. We disagree.

A. The postconviction court did not abuse its discretion by stating an erroneous view of the law.

In its most recent order, the postconviction court misquotes *Clarkin* by stating that appellant needed to show that the state had sufficient evidence to prosecute “with a high

chance of conviction” in 2005, rather than the actual requirement in *Clarkin* that the state have a “reasonable likelihood” of obtaining a conviction. 817 N.W.2d at 689. However, this error did not prejudice appellant because the postconviction court cited *Clarkin* only to note that it was denying appellant’s motion based on its prior *Clarkin* analysis from the November 2021 order, an order which properly states and applies the “reasonable likelihood” requirement. Because the merits of appellant’s claim were decided under the proper legal standard, the postconviction court did not abuse its discretion.

B. The postconviction court did not abuse its discretion by determining that the police had insufficient evidence to charge appellant until 2008.

Appellant next asserts that the postconviction court abused its discretion by determining that the state had insufficient evidence to charge appellant until 2008, when I.H. told police that appellant had confessed to the murder. We are not convinced.

When the state declined to charge appellant in 2005, the state’s evidence included one “eyewitness” who initially failed to identify appellant in a lineup, two witnesses who made inconsistent statements and failed to identify appellant as the perpetrator, and an informant who alleged that appellant had confessed to the crime. The informant’s testimony was undermined by his bias against the appellant, as appellant was tried for the murder of Spencer, the informant’s brother, in a separate case. The postconviction court did not abuse its discretion by determining that the state had insufficient evidence to have a “reasonable likelihood” of convicting appellant in 2005. *Clarkin*, 817 N.W.2d at 689.

Furthermore, the record supports that I.H.’s statements provided the impetus for the state to charge appellant in 2008. In June 2008, I.H. supplied the police with a detailed

description of appellant's motive to commit the 2003 murder, appellant's statements and behaviors indicating that the murder was premeditated, and appellant's confession that he had committed the murder. I.H. had previously provided the police with reliable information, he lived with appellant at the time of appellant's confession, and unlike the state's other informant, had no known bias against appellant. Based on the strength of I.H.'s statements and the flaws in the state's other evidence, the postconviction court did not abuse its discretion by determining that the state had a "reasonable likelihood" of convicting appellant only following I.H.'s 2008 statements. *Clarkin*, 817 N.W.2d at 869.

II. The postconviction court did not abuse its discretion by denying appellant's request for an in-camera review of Smith's jailhouse-visitor logs.

Appellant appears to argue that the state used I.H.'s report as a pretextual basis to charge him in 2008, when in reality the state relied on Smith's information, which was known to the state in 2005. The record belies appellant's assertion.

Smith's information pertained to Spencer's murder, rather than the murder of Dortch. Additionally, the state filed a motion in limine to exclude any reference to Smith during appellant's trial and recommended that Smith be prosecuted for perjurying himself before a grand jury in the Spencer case. The postconviction court therefore did not abuse its discretion by determining that Smith's information did not serve as the basis for the state's charging decision. Because appellant's request for an in-camera review of Smith's jail records rested on the faulty premise that the state had relied on Smith's statements to

charge appellant in 2008, the postconviction court acted within its discretion when it denied appellant's request.

Affirmed.