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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1251
A23-1288**

State of Minnesota,
Respondent,

vs.

Travis Clay Andersen,
Appellant.

**Filed July 29, 2024
Affirmed in part, reversed in part, and remanded
Ross, Judge**

Carver County District Court
File Nos. 10-CR-22-352, 10-CR-22-421

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

Mark Metz, Carver County Attorney, Kevin A. Hill, Assistant County Attorney, Chaska,
Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Andrea
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Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Carver County jail inmate Travis Andersen faced charges of committing threats of
violence against detention deputies after, among other threats, he told a jailer that he would

“come find [her] and . . . f---ing kill [her].” After Andersen repeatedly screamed profanities at the district court judge and disrupted a pretrial proceeding, the district court found him in criminal contempt of court and sentenced him to serve 60 days in jail with “no [g]ood [t]ime [credit] given during th[o]se 60 days.” But after a jury later found Andersen guilty of committing threats of violence, the district court issued an order increasing the contempt sentence to 90 days because it learned that the department of corrections automatically applies a two-thirds good-time credit to each sentence. In these consolidated appeals, Andersen argues that the district court erroneously refused to allow him to represent himself at trial and erroneously increased his contempt sentence. Andersen submitted two supplemental briefs asserting multiple bases to reverse. Andersen’s self-representation contention fails because the district court expressly announced that it would grant Andersen’s request to represent himself at trial if he chose to make the request after his newly appointed attorney had time to prepare, but Andersen did not then make the request. We also see no merit in his supplemental arguments. We therefore affirm in part. But we reverse in part and remand for resentencing because the district court abused its discretion by adding to Andersen’s 60-day contempt sentence.

FACTS

Travis Andersen was incarcerated in the Carver County jail in April and May of 2022 when he threatened to kill two detention deputies. The state charged Andersen in separate complaints with two counts of making threats of violence. The cases proceeded together before being tried separately. The district court held a hearing in November 2022 during which Andersen “became upset and began yelling,” “continued yelling” despite the

district court's admonition to stop, was "swearing and screaming at those around him, including the [district c]ourt," and "used the word 'f---,' or variations there[of], at least six times." The district court held Andersen in criminal contempt of court and ordered him to serve a 60-day jail sentence "consecutive to any and all sentences and . . . [with no] [g]ood [t]ime [credit] given during th[o]se 60 days."

On the scheduled day of trial on one of the threats-of-violence charges in December 2022, Andersen and the district court engaged in a discussion that forms the basis of Andersen's primary contention in this appeal, which is that the district court denied him his right to represent himself. We recount relevant portions of that discussion here.

Andersen complained that his attorney had not secured witnesses whom Andersen thought should testify on his behalf. He then informed the district court, "I'd like a new attorney to represent me and I feel like if I represented myself then I want my witnesses here"

The district court responded by asking, "Do you want a continuance then to represent yourself and to be able to see if you can secure witnesses?" After more discussion in which the district court attempted to clarify Andersen's request, Andersen said, "Okay. Then if you appoint a new lawyer then I will waive my right to a speedy trial." The judge specified, "If I entered a new lawyer, we would have to give him or her more additional time to investigate the case," to which Andersen replied, "Perfect. All right. Real good." The district court again asked a clarifying question, "Is that what you want?" Andersen answered, "Sure. Yes."

The district court discussed with counsel and Andersen which lawyer or law firm the court might appoint and, it announced the new trial date of May 2, 2023. Andersen complained, “Wow. . . . I mean, that’s a little far out here and then now, I’m sitting in a super max prison right now 24 hours a day.” The district court explained that the new trial date would likely be necessary for any attorney to properly investigate the case and prepare for trial. Andersen interrupted, “You . . . know what, Judge, I’m just going to represent myself then today. Then I’d like blank subpoenas to subpoena the witnesses that I will have testify on my behalf. We’ll just get this trial done with and then I will represent myself in sentencing next week.”

The district court rejected Andersen’s suggestion to return the case for trial immediately and issue Andersen blank subpoenas to summon witnesses to testify the following day. Andersen insisted both that the district court allow the case to go to trial immediately and that it allow him to hail any witness to testify, threatening the district court that refusing to allow him to call witnesses would be an error he would raise on appeal: “I mean, really if you’re just going to deny my witnesses, which is my Sixth Amendment constitutional right . . . I can just take that up later . . . in the appellate courts.”

The district court judge explained, “I don’t give you blank subpoenas on a Tuesday and then move people into court on Wednesday.” After Andersen continued to argue with the district court by insisting both that the case proceed to trial immediately and that he be allowed to subpoena witnesses for their immediate appearance, the judge ended the discussion, stating, “Now, I’m giving you what you wanted. I’ve granted you everything you wanted today.” The judge concluded by restating that he was appointing new counsel

for Andersen and that the trial would occur in May. The judge added, “If you choose in May to represent yourself then I will appoint [the law firm] to [serve as] standby counsel.”

The trials on the two criminal complaints occurred sooner than anticipated, in March 2023. Andersen did not ask to represent himself at trial, and his new attorney did not call any witnesses other than Andersen. The juries in each case found Andersen guilty as charged. The district court sentenced Andersen to serve two consecutive prison terms on each count—14.4 months and one day. The district court issued a separate order modifying Andersen’s contempt sentence from 60 days to 90 days, reiterating that it did not intend for Andersen to receive any good-time credit for his contempt sentence and explaining that the department of corrections had informed it that good-time credit is automatically incorporated into every sentence.

Andersen separately appealed each of his threats-of-violence convictions, and we consolidated the appeals. This opinion resolves both appeals.

DECISION

Andersen raises two arguments in his principal briefs, and he makes numerous additional arguments in his supplemental briefs. He primarily argues that the district court denied him his constitutional right to represent himself and that the district court improperly increased his contempt sentence from 60 to 90 days. We address those arguments and his supplemental arguments in turn.

I

We are not persuaded by Andersen’s contention that the district court denied him his right to self-representation. Both the United States and Minnesota Constitutions provide

defendants the right to legal counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. And with that right comes a defendant's right to represent himself. *Faretta v. California*, 422 U.S. 806, 834 (1975); *State v. Richards*, 456 N.W.2d 260, 263 (Minn. 1990). Once the district court receives a defendant's request to represent himself, it "must determine (1) whether the request is clear, unequivocal, and timely, and (2) whether the defendant knowingly and intelligently waives his right to counsel." *State v. Blom*, 682 N.W.2d 578, 613 (Minn. 2004) (quoting *Richards*, 456 N.W.2d at 263). We review the denial of a defendant's request to represent himself for clear error. *Id.* We hold that Andersen failed to invoke his right to self-representation.

Andersen did not clearly and unequivocally assert his right to represent himself at trial. Andersen made two clear requests during the hearing after complaining that his attorney was not prepared and discharging him. He asked that the district court appoint him new counsel and that the trial be continued to allow the new counsel time to prepare. He had told the district court, "[I]f you appoint a new lawyer then I will waive my right to a speedy trial." Andersen answered plainly, "Sure. Yes," to the judge's inquiry, "Is that what you want?" after the judge declared, "If I entered a new lawyer, we would have to give him or her more additional time to investigate the case." The judge accurately summarized, "I've granted you everything you wanted today," after Andersen quibbled unsuccessfully that the district court should disregard his request for a continuance and instead give him unfettered power to hail potential witnesses into court to testify within 24 hours using "blank subpoenas."

It is true that the record shows that Andersen did not want his requested continuance to last until May 2023, but Andersen does not appeal the district court's decision to continue the trial (and as it turned out, the trial occurred two months sooner than scheduled). We do not read the record as showing that the district court denied Andersen his right to represent himself at trial, given its conditioned promise to Andersen: "If you choose in [the month of the continued trial] to represent yourself," the court would grant the request. Andersen never made any request to represent himself at the time the district court had invited him to do so.

We are certain that we have accurately construed the lengthy exchange between the district court and Andersen. After he learned of the continued trial date, Andersen told the district court that he was "just going to represent [himself] then *today*," that he'll "represent [himself] and we'll proceed with trial *today*," that "we can proceed with trial *today* with or without an attorney or with or without advisory counsel," that he would just "tell the jurors that *today* once we start trial," that he was "competent enough to go to trial *today*," and that "[w]e're going to proceed with trial *today* because I'm sick of having this go on any further." (Emphasis added.) Andersen was not asking permission to represent himself at the eventual trial; he was instead urging the court to reconsider its granting of his request for a continuance so the trial could occur "today." We cannot reasonably construe his insistence that the trial occur "today" with or without an attorney as a request to represent himself at the continued trial. We hold that the district court did not deny Andersen the right to represent himself at trial.

II

Andersen convincingly argues that the district court improperly increased his criminal-contempt-of-court sentence from 60 to 90 days. The district court enjoys broad discretion in sentencing. *State v. Soto*, 855 N.W.2d 303, 307–08 (Minn. 2014). And the district court may correct a sentence not authorized by law. Minn. R. Crim. P. 27.03, subd. 9. Andersen maintains that the district court unlawfully increased his contempt sentence, while the state maintains that the district court merely corrected a sentence not authorized by law. We must therefore decide whether the district court’s order increasing Andersen’s sentence from 60 days to 90 days corrected an unauthorized sentence.

We first piece together the atypical series of procedural events to answer whether the district court’s order increasing Andersen’s sentence can fairly be described as its correction of a lawfully unauthorized sentence. After Andersen engaged in profane and combative behavior during the November 2022 hearing, the district court ordered him removed from the courtroom, followed by a tumultuous struggle between Andersen and courtroom security staff and the district court’s declaration, “You’re in direct contempt of the court, Mr. Andersen. Goodbye.” The district court’s contempt order concluded that Andersen had engaged in criminal contempt of court under Minnesota Statutes section 588.20, subdivision 2(1) (2020), and it provided this sentencing statement: “Due to Defendant’s contemptuous behavior, it is hereby ordered Defendant serve a sentence of 60 days. These 60 days shall be consecutive to any and all sentences and there shall be no Good Time given during these 60 days.” The district court judge later orally reiterated the sentence after Andersen was found guilty on the threats charges, stating at the May 2023

sentencing hearing, “Finally, I found Mr. Andersen in contempt of Court. I have issued an order on that piece and I’m going to order that he serve 60 days on that matter consecutive and separate from these three sentences and there is no good time allotted to those 30 [sic] days.” But the district court then issued its now contested order in June 2023, changing Andersen’s contempt sentence after summarizing communication that it had received from the department of corrections relevant to the sentence:

[T]he Court learned that Good Time is automatically counted into the system—each sentence entered is automatically divided into two-thirds/one-third segments. Therefore, for Defendant to actually serve 60 days for the contempt, he would have to actually be sentenced to 90 days to account for the automatic Good Time calculation.

The district court then reasoned that it should amend Andersen’s contempt sentence:

The Court finds that amending Defendant’s contempt sentence to 90 days best conforms to this Court’s initial purpose of ordering no Good Time, and that such a change is administrative only—Defendant is not in any danger of serving more than the 60 days he was ordered to serve in the Contempt Order.

Finally, the district court issued the following order modifying Andersen’s sentence:

Due to Defendant’s contemptuous behavior, the facts of which are outlined in this Court’s previous Contempt Order, it is hereby ordered Defendant serve a sentence of 90 days: 60 days to be served in prison and 30 days to be served on supervised release. These 90 days shall be consecutive to the sentence imposed in this matter, as well as the sentences imposed in 10-CR-22-352 and 10-CR-22-167.

We hold that the district court’s June 2023 order did not correct a sentence unauthorized by law. Our conclusion rests on two circumstances. First, the district court’s June 2023 order did not suggest that it was intended to *correct* an *unlawful* sentence but to

amend a *lawful* sentence to conform to the district court’s purpose to confine Andersen for 60 days. The state does not explain why we should disregard and fundamentally alter the district court’s express rationale. We decline to do so.

And second, the original sentence itself was not unauthorized by law. “For a sentence to be unauthorized, it must be contrary to law or applicable statutes.” *Evans v. State*, 880 N.W.2d 357, 359 (Minn. 2016). The sentence for criminal contempt of court is comprised of either a fine or a term of incarceration (or both): “[T]he person shall be punished by a fine of not more than \$250, or by imprisonment in the county jail, workhouse, or work farm for not more than six months or by both.” Minn. Stat. § 588.10 (2020). As part of an incarceration sentence, the person is granted a reduction of “the term of the sentence one day for each two days served . . . during which the person has not violated any rule or discipline of the place” of incarceration. Minn. Stat. § 643.29, subd. 1 (2020); *cf. State v. Hoskins*, 943 N.W.2d 203, 212 (Minn. App. 2020) (interpreting a related statute to hold that “[p]rospective deprivation of the statutory good conduct allowance is not permitted”). In other words, the sentenced person’s statutory right to a “good time” reduction exists independent of his sentence. The department of corrections apparently so informed the district court and implicitly added that it would therefore not honor the district court’s stated attempt to prevent Andersen from receiving the good-time credit afforded to him by statute. The district court’s original sentence (Andersen’s incarceration for 60 days) was a statutorily permitted term, and it was therefore authorized by law despite the district court’s attempted but unenforceable restriction.

The district court has the duty and power to correct an unlawful sentence, but it has no authority to modify a lawful, executed sentence. “The trial court’s discretion to sentence is built into the statutes authorizing sentencing. That discretion vanishes once the sentence is executed.” *Reesman v. State*, 449 N.W.2d 489, 490 (Minn. App. 1989). Because we reject the state’s argument that the district court’s June 1 order constitutes a proper correction of a sentence not authorized by law, we reverse as an abuse of its discretion the district court’s 90-day contempt-of-court sentence. We remand to allow the district court to correct the sentence to 60 days of incarceration.

III

Andersen’s supplemental briefs offer additional arguments, none of which persuades us to reverse. He maintains that the evidence was insufficient to support his threats-of-violence convictions, that the prosecutor committed misconduct, that he received ineffective assistance of counsel, that the district court failed to hold an omnibus hearing, and that the district court was biased against him. The arguments lack legal or factual support.

Andersen’s argument that the state presented insufficient evidence to support his convictions has no merit. We review claims of insufficient evidence by considering the evidence in the light most favorable to the jury’s verdict to determine whether the evidence permitted the jury to find the defendant guilty. *State v. Olhausen*, 681 N.W.2d 21, 25–26 (Minn. 2004). We assume that the jury believed the state’s witnesses and disbelieved all contrary evidence. *State v. Friese*, 959 N.W.2d 205, 214 (Minn. 2021). Andersen’s

challenge to the sufficiency of the evidence supporting his convictions fails under this standard.

In the separate trials, the jury heard evidence that Andersen threatened two Carver County detention deputies. In one of the trials, the jury heard a female deputy testify that, as she walked past Andersen's cell, Andersen threatened to kill her. She told the jury that Andersen "was yelling and calling [her] a bunch of names and telling [her] that [she] should drive off a bridge and kill [herself]," that he warned that "he's not going to be locked up forever, he's not going to be behind the secured door forever," and that she had "better watch [her] back because he will come find [her] and . . . f---ing kill [her]." In the other trial, the jury heard a male deputy testify that Andersen threatened to kill him. He testified that Andersen told him that he would "[f]ind [him] on the outside and make [him] bend and spread," that he was "[g]oing to f---ing kill [him]," and that he was "going to f---ing gut [him]." We are satisfied that this testimony is sufficient to allow the jury to find that Andersen violated the threats-of-violence statute, which prohibits a person from "threaten[ing], directly or indirectly, to commit any crime of violence with purpose to terrorize another . . . or in a reckless disregard of the risk of causing such terror." Minn. Stat. § 609.713, subd. 1 (2020). Obviously, homicide qualifies as a "crime of violence." *See id.* (referring to Minn. Stat. § 609.1095, subd. 1(d) (2020), listing crimes qualifying as crimes of violence); Minn. Stat. § 609.1095, subd. 1(d) (listing all of Minnesota's murder, manslaughter, and criminal-vehicular-homicide statutes). Because we assume that the jury believed the state's witnesses, we conclude that the state presented sufficient evidence to support both of Andersen's convictions of making threats of violence.

We likewise are unconvinced by Andersen's contention that the state committed prosecutorial misconduct during one of his trials when the prosecutor argued as follows: "Why would [the deputy] make up a threat like that against Mr. Andersen? She doesn't want anything to do with him. She's deathly afraid of him. She believes that he will follow through on his threats and find her and kill her when he got out of jail." Andersen failed to object to the prosecutor's argument, and we therefore review his challenge only under the modified plain-error test. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Under that test, we will consider reversing if Andersen identifies a plain error that affected his substantial rights. *See id.* Andersen fails to identify any error. The record informs us that the prosecutor's references to the deputy's fear is supported by the deputy's direct testimony. Because the prosecutor argued based only on the evidence presented, the prosecutor did not engage in misconduct.

Similarly unpersuasive is Andersen's argument that he received ineffective representation from his public defender before the district court appointed different counsel. Both the United States and Minnesota Constitutions provide criminal defendants the right to the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Andersen must show both that his counsel's performance was below an objective standard of reasonableness and that there is a reasonable probability of a different outcome without the errors of counsel. *State v. Jones*, 977 N.W.2d 177, 193 (Minn. 2022) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). The alleged errors of his first counsel's failing to properly investigate do not warrant discussion; the errors could not have resulted in prejudice because at trial Andersen was represented by different counsel, who, over

Andersen's own objections, was afforded additional time and opportunity to investigate any matter relevant to the charges. Andersen's ineffective-assistance challenge fails.

Andersen's final two contentions warrant little analysis. His contention that the district court failed to hold an omnibus hearing within 28 days of his June 3, 2022 first appearance, as required by Minnesota Rule of Criminal Procedure 11.01(a), is belied by the fact that the court held an omnibus hearing within 20 days—on June 22, 2022. And his contention that the district court was biased against him cannot rest on his only basis, which is the fact that the district court made adverse rulings against him. *See State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006) (restating that the district court's adverse rulings, "without more, do not constitute judicial bias"). None of Andersen's arguments supports reversal.

Affirmed in part, reversed in part, and remanded.