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

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A24-1081

A24-1308

Devin Rayshawn Jones, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed July 28, 2025
Affirmed
Smith, Tracy M., Judge

Ramsey County District Court
File No. 62-K0-03-001809

Devin Rayshawn Jones, Faribault, Minnesota (self-represented appellant)

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In these consolidated appeals from the district court's order denying, in part, his petition for postconviction relief and from the district court's order resentencing him, appellant Devin Rayshawn Jones argues that (1) the state was required to charge him by

indictment because he effectively received a life sentence, (2) the district court erred in resentencing him when it increased the length of two of his four sentences even though his aggregate sentence was shorter than that originally imposed, (3) the district court erred in using the *Hernandez* method¹ when sentencing him for multiple offenses committed as part of the same behavioral incident, and (4) the district court erred by imposing multiple sentences based on the multiple-victim rule, which, he argues, violates the separation-of-powers doctrine. We affirm.

FACTS

Following a jury trial in 2004, Jones was convicted of and sentenced for multiple felony offenses in connection with an assault and two shootings that occurred on May 14, 2003.² Sentencing the offenses in the order in which they occurred, the district court imposed consecutive executed sentences for Jones's crimes against three separate victims, as follows: 39 months for second-degree assault with a dangerous weapon against Victim 1, in violation of Minnesota Statutes section 609.222, subdivision 1 (2002); 153 months for attempted second-degree murder of Victim 2, in violation of Minnesota Statutes sections 609.17, subdivision 1, and 609.19, subdivision 1(1) (2002); and 306 months for

¹ When multiple offenses that are not part of the same behavioral incident are sentenced on the same day, the *Hernandez* method—*Hernandizing*—permits the district court to increase a defendant's criminal-history score as each sentence is imposed. *See State v. Hernandez*, 311 N.W.2d 478 (Minn. 1981) (employing the process in determining the defendant's criminal history). *Hernandizing* applies only to concurrent sentences. *State v. Moore*, 340 N.W.2d 671, 673 (Minn. 1983).

² The facts underlying the case can be found in this court's opinion in Jones's direct appeal. *State v. Jones*, No. A04-1284, 2005 WL 1869184, at *1-5 (Minn. App. Aug. 9, 2005), *rev. denied* (Minn. Oct. 26, 2005).

second-degree murder of Victim 3, in violation of Minnesota Statutes section 609.19, subdivision 1(1). Jones's consecutive sentences totaled 498 months. The district court also imposed a concurrent prison sentence of 60 months for unlawful possession of a firearm, in violation of Minnesota Statutes section 624.713, subdivision 1(b) (2002).

Jones filed a direct appeal, asserting several challenges to his convictions and arguing that the consecutive sentencing violated his Sixth Amendment rights. *Jones*, 2005 WL 1869184, at *1, *6-10. We rejected the arguments and affirmed his convictions and sentences. *Id.* at *6-10.

In November 2023, Jones filed what he styled as a motion for correction or reduction of sentence under Minnesota Rule of Criminal Procedure 27.03, subdivision 9. He asserted that his sentence was unlawful for five reasons: (1) he should have been charged by indictment rather than complaint because of the length of the sentences; (2) his consecutive sentencing was contrary to *Blakely v. Washington*, 542 U.S. 296 (2004); (3) his consecutive sentencing was not permitted by Minnesota Statutes sections 609.035 and 609.04 (2002) because the offenses occurred as part of a single behavioral incident and because the multiple-victim rule violates the separation-of-powers doctrine; (4) the district court erred by removing the jury's authority to establish the degree of the offenses for which Jones was found guilty; and (5) his consecutive sentencing violated the amelioration doctrine because of an amendment to the sentencing guidelines that was made while his direct appeal was pending.

In May 2024, the district court filed an order granting in part and denying in part Jones's motion. It construed all of Jones's arguments as sentencing claims under rule 27.03,

subdivision 9, except his argument about the jury's authority, which it treated as a postconviction claim. It rejected Jones's claim that he should have been charged by indictment on the merits. The district court also rejected Jones's claim that his consecutive sentences violated his Sixth Amendment rights under *Blakely*, noting that this court had rejected the same claim in Jones's direct appeal. *See id.* at *10. The district court rejected Jones's claims that his sentencing violated Minnesota Statutes sections 609.035 and 609.04 on the merits, and it rejected Jones's challenge to the constitutionality of the multiple-victim rule. It also rejected Jones's argument about the jury's authority to determine the degree of his offense as a time-barred and meritless postconviction claim. Finally, the district court agreed with Jones's amelioration-doctrine claim, determining that the 2005 sentencing guidelines, which went into effect during the pendency of Jones's direct appeal, excluded attempted second-degree murder from the list of crimes that were eligible for consecutive sentencing. *See Minn. Sent'g Guidelines II.F, VI (Supp. 2005).*

Based on its partial grant of Jones's motion, the district court held a hearing and resentenced Jones. For the first three sentences, which were sentenced in the same order that the district court used during Jones's initial sentencing, the district court employed *Hernandizing* and imposed concurrent prison sentences within the presumptive range for each offense. The resulting sentences were concurrent executed sentences of 39 months for second-degree assault with a dangerous weapon against Victim 1, 193 months for attempted second-degree murder of Victim 2, and 426 months for second-degree murder of Victim 3. The district court also imposed a concurrent sentence of the statutorily mandated 60 months' imprisonment for unlawful possession of a firearm.

Jones appealed from both the district court’s order partially denying his motion and the ensuing sentencing order. We consolidated the appeals.

DECISION

Jones argues that the district court erred by denying his motion to correct his sentence. Appellate courts review the denial of a rule 27.03 sentence-correction motion for an abuse of discretion. *State v. Overweg*, 922 N.W.2d 179, 182 (Minn. 2019).

Jones raises four arguments, which we divide into two sections. In the first section, we address his argument that his sentences are unlawful because the state was required to charge him by grand-jury indictment. In the second section, we address his remaining three arguments regarding the length of his sentences on resentencing, *Hernandizing*, and the multiple-victim rule.

I. Jones’s argument that he had to be charged by indictment given the length of his sentences fails.

Jones argues that Minnesota Rule of Criminal Procedure 17.01 required that he be charged by grand-jury indictment rather than by complaint. He contends that, because his initial aggregate sentence of 498 months’ imprisonment is longer than 30 years, which would require him to spend the remainder of his life in prison, the offenses were crimes “punishable by life imprisonment” and therefore had to be charged by indictment under rule 17.01. The interpretation of a procedural rule is reviewed de novo. *Evans v. State*, 880 N.W.2d 357, 359 (Minn. 2016).

As an initial matter, the state argues that the district court should have reviewed this argument as a postconviction claim under Minnesota Statutes section 590.01 (2022) and

should have dismissed it as both time-barred and procedurally barred. There are two potential vehicles for an appellant to challenge a sentence following a direct appeal: a motion to correct a sentence under rule 27.03, subdivision 9, and a petition for postconviction relief under section 590.01. *Washington v. State*, 845 N.W.2d 205, 210 (Minn. App. 2014). Under rule 27.03, subdivision 9, a court may “at any time correct a sentence not authorized by law.” Under section 590.01, in contrast, a petition for postconviction relief is subject to a two-year filing deadline. Minn. Stat. § 590.01, subd. 4. In addition, a postconviction petition is subject to a procedural bar precluding assertion of any issue that could have been, but was not, raised on direct appeal. *Id.*, subd. 1; *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). Neither the time-bar nor the procedural bar applicable to postconviction petitions applies to a motion to correct sentence. *Washington*, 845 N.W.2d at 211.

The district court treated Jones’s argument as properly presented in a motion to correct sentence under rule 27.03, subdivision 9, and addressed the argument on the merits. We assume, without deciding, that the argument is properly presented under rule 27.03, subdivision 9, and so address it on the merits.

Minnesota Rule of Criminal Procedure 17.01, subdivision 1, requires that any offense “punishable by life imprisonment” be prosecuted by indictment. “An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offense.” Minn. Stat. § 628.01 (2024). When an indictment is constitutionally or statutorily required for a crime, “a prosecution in any other mode is unauthorized and an absolute nullity for want of jurisdiction.” *State v. Ronquist*, 600 N.W.2d 444, 447 (Minn.

1999) (quoting 42 C.J.S. *Indictments and Informations* § 6a (1991)). In Minnesota, what was once “a near blanket constitutional requirement for all criminal prosecutions” to be charged by indictment has become “a narrow rule that requires a grand jury indictment only for those offenses punishable by life imprisonment.” *Id.* at 448.

Jones asserts that a crime “punishable by life imprisonment” includes a crime that results in a sentence of 30 years or more in prison, which, by its length, may functionally become a life sentence for an offender. The argument is unconvincing. In *Ronquist*, the Minnesota Supreme Court rejected a claim that a prosecution had to be initiated by indictment in a case in which the charged offense carried a maximum sentence of 15 years’ imprisonment but a sentencing-enhancement statute required the imposition of a lifetime sentence in the appellant’s particular circumstances. *Id.* at 445-46. The *Ronquist* court determined that the charged offense was not one “which may be punished by life imprisonment” for purposes of rule 17.01 because the enhancement applied only after the elements of the charged offense had been proved beyond a reasonable doubt. *Id.* at 449-50 (quotation omitted). And, recently, in *State v. Snyder*, the supreme court applied *Ronquist* in rejecting the appellant’s argument that his potential exposure to a term of life imprisonment during lifetime conditional release amounted to an offense punishable by life imprisonment, thereby requiring the state to charge him by indictment. 2 N.W.3d 302, 303-04 (Minn. 2024).

Jones’s claim that he was subject to a sentence of lifetime imprisonment is less compelling than the appellants’ unsuccessful claims in *Ronquist* and *Snyder*. None of the crimes that Jones was charged with was punishable by a life sentence. The most serious

offense charged—second-degree intentional murder—was punishable by a maximum sentence of “not more than 40 years.” Minn. Stat. § 609.19, subd. 1. The fact that the sentence that was imposed—an aggregate sentence of 498 months initially and a sentence of 426 months for second-degree intentional murder after resentencing—might result in Jones serving the remainder of his life in prison does not mean that the second-degree-murder charge or any of the other charges had to be brought by a grand-jury indictment. The state properly charged Jones by complaint, and his sentencing challenge on this basis therefore fails.

II. Jones’s other challenges to his sentences are unavailing.

A. The sentences imposed on resentencing do not violate the prohibition on more severe punishment following a defendant’s successful sentencing challenge.

Jones argues that the district court abused its discretion by increasing the length of two of his four sentences when resentencing him after partially granting his motion for sentencing relief.

“When a sentence is set aside as a result of an appeal by a defendant, the [district] court on resentencing may not impose a more severe penalty than the sentence which it previously imposed.” *State v. Wallace*, 327 N.W.2d 85, 88 (Minn. 1982). The supreme court observed that increasing a sentence after a defendant’s successful appeal “would have the effect of punishing [a] defendant for exercising his right to appeal from the sentence.” *Id.*

Jones argues that, because the two challenged sentences each exceed the length of the sentences initially imposed for the same offenses, he suffered a more severe penalty on

resentencing. The state counters that Jones relies on caselaw that has since been clarified in cases addressing the restriction on resentencing in the context of multiple sentences. The state argues that, in such cases, it is “the imposition of the *total* sentence [that] may not exceed the total sentence originally imposed,” rather than any one individual sentence. Accordingly, the state argues that, when multiple sentences were imposed, the length of individual sentences may be increased at resentencing so long as the aggregate sentence after resentencing is no greater than that initially imposed.

In *State v. Prudhomme*, relied upon by Jones, the supreme court held that a district court could not increase the penalty previously imposed for any one of multiple offenses on which it resentenced an appellant. 228 N.W.2d 243, 245-46 (Minn. 1975). But, as the state argues, intervening caselaw has affected how the holding of *Prudhomme* applies to resentencing in challenges when more than one sentence was imposed.

For example, in *State v. Rohda*, the supreme court determined that, when resentencing an appellant who had been sentenced to consecutive sentences of 15 and 76 months, the district court could view the consecutive sentences as “the functional equivalent of a concurrent sentence of 91 months” and it could therefore resentence the appellant concurrently “up to but not more than 91 months.” 358 N.W.2d 39, 41 (Minn. 1984).

And in *Johnson v. State*, we affirmed a district court’s resentencing of an appellant in a manner that decreased one of his two sentences and increased the other by the same number of months, resulting in the same aggregate sentence as had been initially imposed. 733 N.W.2d 834, 835-36 (Minn. App. 2007), *rev. denied* (Minn. Sept. 18, 2007). Johnson

petitioned for postconviction relief, resulting in a determination that his criminal-history score had been miscalculated and, due to that miscalculation, one of his sentences was ten months longer than was permissible. *Id.* at 836. The district court resentenced Johnson, shortening that sentence by ten months, but it also increased his other sentence by ten months,³ reasoning that Johnson was “not entitled to a reduction of his overall sentence” because a third charge against him had been dismissed in exchange for his plea to the initial aggregate sentence. *Id.* at 836-37. On appeal, we rejected Johnson’s argument that the district court abused its discretion by increasing the length of the second sentence, concluding that it was within the district court’s discretion to lengthen the sentence to comport with Johnson’s plea agreement. *Id.* We determined that the sentence was undisputedly authorized by law, did not exaggerate the criminality of Johnson’s conduct because both sentences were within the presumptive ranges or less than the presumptive sentences, and “was precisely the sentence term that Johnson had previously agreed to in exchange for the dismissal of one of the charges against him.” *Id.* at 837.

With these cases in mind, we agree with the state that Jones’s resentencing did not violate the prohibition on imposing a more severe penalty when resentencing after a defendant’s successful sentencing challenge. *See Wallace*, 327 N.W.2d at 88. The district court noted at Jones’s resentencing hearing that it was aware it could not “increase the sentence beyond what it was originally.” The district court acted in accord with that statement by resentencing Jones to a prison sentence of 426 months—the longest of his

³ The increased sentence on that count did not exceed the presumptive sentence for the offense. *See id.* at 835-36.

concurrent sentences—which is 72 months less than his initial aggregate prison sentence of 498 months. The district court did not abuse its discretion in resentencing Jones to concurrent sentences that yielded a shorter aggregate sentence than his initially imposed consecutive sentences.

B. It was not improper for the district court to use the *Hernandez* method when imposing concurrent sentences for crimes involving multiple victims.

Jones argues that the district court abused its discretion by employing *Hernandizing* to compute his criminal-history score when resentencing him because his offenses were part of the same behavioral incident. The state counters that, even though the offenses arose out of a single behavioral incident, *Hernandizing* was proper because there were multiple victims.

“[A] sentence based on an incorrect criminal history score is an illegal sentence.” *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007). Whether the district court based its decision on an erroneous view of the law, including its interpretation of the Minnesota Sentencing Guidelines, is a legal question that appellate courts review de novo. *See State v. Scovel*, 916 N.W.2d 550, 554 (Minn. 2018).

Here, the district court resentenced Jones to concurrent sentences on all four counts. It sentenced the assault, attempted murder, and murder offenses in that order, which was the chronological order in which Jones committed the acts. As to those offenses, it employed *Hernandizing* by including the assault in Jones’s criminal history when sentencing for the attempted murder and then including the attempted murder in his criminal history when sentencing for the murder. For each of the three offenses, the district

court imposed sentences within the presumptive range. The district court then imposed the statutorily mandated sentence for unlawful possession of a firearm.

Contrary to Jones's argument, *Hernandizing* was not improper here even though at least two of the offenses arose out of the same behavioral incident. Under the guidelines in effect at the time of his crimes, *Hernandizing* was permissible for multiple offenses arising out of a single course of conduct in which there were multiple victims. *See* Minn. Sent'g Guidelines II.B.1.c. (Supp. I 2003)⁴; *see also* *State v. Herrmann*, 479 N.W.2d 724, 729 n.2 (Minn. App. 1992) (noting that *Hernandizing* may be used to calculate a defendant's criminal-history score for offenses arising from a single behavioral incident involving multiple victims), *rev. denied* (Minn. Mar. 19, 1992). We therefore discern no error in the district court's decision to resentence him to concurrent sentences using *Hernandizing*.

C. The district court did not err by imposing multiple sentences.

Last, Jones argues that the district court violated Minnesota Statutes section 609.035 by imposing multiple sentences because his offenses arose out of a single behavioral incident and the multiple-victim rule violates the constitutional doctrine of separation of powers.

Section 609.035, subdivision 1, provides that "if a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses." This limitation applies to the imposition of separate sentences for criminal offenses that arise from a single behavioral incident. *State v. Scott*, 298 N.W.2d

⁴ The rule remains unchanged under the current sentencing guidelines. Minn. Sent'g Guidelines 2.B.1.e(2) (2024).

67, 68 (Minn. 1980). But “section 609.035 does not bar multiple sentences when the defendant commits crimes against multiple victims.” *State v. Alger*, 941 N.W.2d 396, 400 (Minn. 2020). For purposes of section 609.035, “behavior that harms one victim is not the same ‘conduct’ . . . as behavior that harms multiple victims.” *Id.* (quoting *Munt v. State*, 920 N.W.2d 410, 419 (Minn. 2018)). The reason for this distinction is that “the legislature did not intend . . . to immunize offenders from the consequences of separate crimes intentionally committed in a single episode against more than one individual.” *Id.* (quoting *Stangvik v. Tahash*, 161 N.W.2d 667, 672 (Minn. 1968)). As a result, under the multiple-victim rule, an offender’s conduct that resulted in crimes against multiple victims does not trigger application of section 609.035. *Id.*

The supreme court has already rejected the constitutional challenge to the multiple-victim rule that Jones asserts here. In *Munt*, an appellant argued that the supreme court violated the constitutional separation of powers by establishing the multiple-victim rule in sentencing because it is the role of the legislature, and not the judiciary, to set “lawful penalties for the violation of criminal laws.” 920 N.W.2d at 418. The supreme court acknowledged that the judiciary’s role in criminal punishment extends only to the imposition of sentences “within the parameters the Legislature has established” but explained that statutory interpretation falls within those parameters. *Id.* The *Munt* court explained that the so-called multiple-victim rule derived from interpreting “what actions satisfy the definition of ‘conduct’ under Minn. Stat. § 609.035” and thus did not result from a violation of the separation of powers. *Id.* at 418-19. Because Jones raises the same

separation-of-powers challenge to the multiple-victim rule as was raised and rejected in *Munt*, his argument fails.

In sum, all of the arguments that Jones asserts in challenging his sentences fail.

Affirmed.