

*This opinion is nonprecedential except as provided by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
A24-1988**

DeMarcus LeMaine Barker, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 20, 2025
Affirmed
Bratvold, Judge**

Rice County District Court
File No. 66-CR-16-575

DeMarcus LeMaine Barker, Bayport, Minnesota (pro se appellant)

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

Brian M. Mortenson, Rice County Attorney, Sean R. McCarthy, Assistant County Attorney, Faribault, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Frisch, Chief Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

This appeal follows a direct appeal that reversed, in part, appellant's sentence and remanded for resentencing and to amend the sentencing order. After resentencing, appellant moved to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9, and here

appeals the denial of that motion. Appellant argues that the district court (1) abused its discretion because his sentence is based on an incorrect criminal-history score and (2) erred by imposing a sentence that is an upward durational departure from the Minnesota Sentencing Guidelines. First, we conclude that the district court did not abuse its discretion in calculating appellant's criminal-history score. Second, we determine that appellant failed to challenge the upward durational departure in the motion to correct his sentence. Even if the second issue were properly before this court, the district court based the departure on an aggravating factor that this court upheld in the direct appeal. Thus, we affirm.

FACTS

In March 2016, respondent State of Minnesota charged appellant DeMarcus LeMaine Barker with importing controlled substances across state lines under Minn. Stat. § 152.0261, subd. 1 (2014), and fleeing a peace officer in a motor vehicle under Minn. Stat. § 609.487, subd. 3 (2014). The complaint, as amended in April 2017, charged Barker with seven additional counts of controlled-substance-related offenses. Barker waived his right to a jury trial. Following a court trial, the district court found Barker guilty on all counts.

At Barker's November 2017 sentencing hearing, the district court determined that Barker's criminal-history score was seven points. The district court also determined that two aggravating factors applied under Minn. Stat. § 609.1095 (2014): (1) a pattern of criminal conduct and (2) danger to public safety. The district court sentenced Barker to 316 months in prison for importing controlled substances across state lines—an upward

durational departure based on aggravating factors—and imposed a guidelines sentence of 22 months for fleeing a peace officer, to be served concurrently.

Barker appealed. This court affirmed in part, reversed in part, and remanded. *State v. Barker*, No. A18-0206, 2019 WL 272873, at *1 (Minn. App. Jan. 22, 2019), *rev. denied* (Minn. Mar. 27, 2019). In a nonprecedential opinion, this court affirmed on the sufficiency of the evidence for possession of controlled substances and intent to sell marijuana. *Id.* at *2-4. On the other hand, this court reversed and remanded Barker’s sentence, concluding that the district court erred in assigning criminal-history points for three of Barker’s prior Illinois convictions from 2002 and 2005. *Id.* at *6-7. This court affirmed the upward durational departure from the sentencing guidelines, determining that the district court improperly relied on the “pattern of criminal conduct” aggravating factor, but that it properly relied on the “danger to public safety” aggravating factor. *Id.* at *9. Finally, this court concluded that the district court erred when it denied Barker supervised release and therefore “remand[ed] to the district court to amend the sentencing order reinstating early release eligibility.” *Id.* The Minnesota Supreme Court denied Barker’s petition for further review.

On remand, the district court resentenced Barker in July 2019 using a corrected criminal-history score of five and one-half points, rounded down to five points.¹ This score included two prior felony convictions from December 2011 in Goodhue County (Goodhue County convictions): second-degree assault and unlawful firearm possession. The district

¹ No partial criminal-history points are given; “the point value must be rounded down to the nearest whole number.” Minn. Sent’g Guidelines 2.B.1.i & cmt. 2.B.102 (Supp. 2015).

court assigned one and one-half felony points for each Goodhue County conviction. Based on the aggravating factor upheld in the direct appeal, the district court imposed a sentence of 316 months in prison, an upward durational departure, for importing controlled substances across state lines and imposed a guidelines sentence of 22 months for fleeing a peace officer.

In July 2021, Barker petitioned for postconviction relief, seeking resentencing on three grounds, arguing that (1) the amelioration doctrine as discussed in *State v. Kirby*, 899 N.W.2d 485 (Minn. 2017), applies to his case; (2) his *Blakely* waiver of a jury determination of the aggravating factor was invalid; and (3) the district court erred in relying on danger to public safety as an aggravating factor because “there is nothing inherently violent about the importation of drugs across state lines.” In August 2021, the district court denied the petition on the merits without a hearing. Barker did not appeal.

In September 2024, Barker moved the district court to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9. Barker argued that the district court erred by calculating a criminal-history score of five and one-half points on resentencing, contending that his two prior Goodhue County convictions “arose from the same single-behavioral incident.” Barker maintained that the district court should have assigned felony points for only one of the Goodhue County convictions. His motion requested that “his sentence be corrected using the correct criminal history score of four (4) points.”

The district court denied Barker’s motion without a hearing. The district court’s written order reasoned that, although the single-behavioral-incident rule prohibits multiple sentences for multiple convictions that are part of a single behavioral incident and the

parties agree that the Goodhue County convictions “arose out of the same behavioral incident,” a statutory exception for firearm convictions applies. Because one of Barker’s Goodhue County convictions was for unlawful firearm possession, the single-behavioral-incident rule did not apply. The district court concluded that Barker’s criminal-history score of five and one-half points was accurate.

Barker appeals.

DECISION

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

Under Minnesota Rule of Criminal Procedure 27.03, subdivision 9, “[t]he court may at any time correct a sentence not authorized by law.” “For a sentence to be unauthorized, it must be contrary to law or applicable statutes.” *State v. Schnagl*, 859 N.W.2d 297, 301 (Minn. 2015). Appellate courts “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). “Specifically, [appellate courts] 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). “[W]hen a defendant files a motion under Minn. R. Crim. P. 27.03, subd. 9, to correct a sentence after the time for direct appeal has passed, the defendant bears the burden of proving that his or her sentence was based on an incorrect criminal-history score.” *Williams v. State*, 910 N.W.2d 736, 743 (Minn. 2018). In the first issue, Barker argues that the district court sentenced him with an incorrect criminal-history score. A

district court's calculation of a criminal-history score is reviewed for abuse of discretion. *State. v. Maley*, 714 N.W.2d 708, 711 (Minn. App. 2006).

Barker contends that the district court's criminal-history score was incorrect because the Goodhue County convictions, for each of which he had been assigned one and one-half criminal-history points, were part of the "same behavioral incident."

The same-behavioral-incident rule is set out in Minn. Stat. § 609.035, subd. 1 (2014): "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 and a conviction or acquittal of any one of them is a bar to prosecution for any other of them." This statute "prohibits the imposition of multiple sentences for offenses committed as part of a single behavioral incident." *State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009). Statutory exceptions apply, however, including an exception for firearm offenses. *See* Minn. Stat. § 609.035, subds. 3-6 (2014). A conviction for a firearm offense "is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct." *Id.*, subd. 3.

In its order denying Barker's motion for a corrected sentence, the district court considered how to calculate Barker's criminal-history score for the Goodhue County convictions. The district court acknowledged that there was "no dispute that the two [Goodhue County] offenses arose out of the same behavioral incident." But because one of the Goodhue County convictions was a firearm offense, the district court analyzed the statutory exception for firearm offenses in Minn. Stat. § 609.035, subd. 3, as well as the

sentencing guidelines. The district court concluded that “both Goodhue County convictions were properly considered in calculating [Barker’s] criminal history score.”

On appeal, Barker argues that he should have received only two points total for the Goodhue County convictions, which would yield a total criminal-history score of four and one-half points rather than the total criminal-history score of five and one-half points the district court calculated at his resentencing. Barker’s brief to this court does not discuss the statutory exception for firearm offenses, nor does Barker discuss the relevant sentencing guidelines.

We agree with the district court that Barker was properly sentenced for both Goodhue County offenses under the firearm exception to the same-behavioral-incident rule in Minn. Stat. § 609.035, subd. 3.² As to the criminal-history score, the district court noted that Barker “appears to argue that the Minnesota Sentencing Guidelines prevent the court from considering both Goodhue County convictions in calculating [Barker’s] criminal history score.” Prior felony convictions for which a sentence was imposed are generally assigned criminal-history points based on the severity level of the offense. Minn. Sent’g

² The supreme court’s decision in *Williams*, 771 N.W.2d 514, as noted by the district court, supports applying the statutory exception for firearm offenses to Barker’s Goodhue County convictions. In *Williams*, the district court convicted Williams of first-degree assault and unlawful possession of a firearm, both of which arose from the same behavioral incident. 771 N.W.2d at 520. The district court first sentenced Williams for the firearm conviction, which increased his criminal-history score by one point when he was sentenced for the assault conviction. *Id.* at 517. The supreme court affirmed, reasoning that the exception to the single-behavioral-incident rule for firearm offenses applied to Williams’s case. *Id.* at 524. The supreme court described the exception as providing that a “defendant convicted of a felon-in-possession-of-a-firearm offense may also be convicted and sentenced for any other offense committed as part of the same behavioral incident.” *Id.*

Guidelines 2.B.1 (Supp. 2015). There are, however, “exceptions to including prior felonies in criminal history when multiple felony sentences were imposed in a previous court appearance.” Minn. Sent’g Guidelines 2.B.1.d. In one exception, the guidelines instruct that, “[w]hen multiple sentences for a single course of conduct were imposed under Minn. Stats. §§ 152.137, 609.585, or 609.251, include in criminal history only the weight from the offense at the highest severity level.” Minn. Sent’g Guidelines 2.B.1.d.1.

But as the district court explained, “[t]his exception does not apply to multiple sentences for a single course of conduct imposed under Minn. Stat. § 609.035, subd. 3”—the firearm exception to the same-behavioral-incident rule. Thus, the inclusion of both Goodhue County convictions in Barker’s criminal-history score is consistent with the sentencing guidelines. *See Williams*, 771 N.W.2d 520-23 (interpreting a parallel sentencing guideline limiting the use of *current* multiple convictions and concluding that the absence of Minn. Stat. § 609.035, subd. 3, from the list of exceptions means that convictions for which multiple sentences were imposed under that provision may be included in a defendant’s criminal-history score).

We conclude that the Goodhue County convictions were properly counted in Barker’s criminal-history score. The district court, therefore, did not abuse its discretion by denying Barker’s motion to correct his sentence.

II. Barker may not challenge, for the first time on appeal, the district court’s decision to impose an upward durational departure when it resentenced him for importing controlled substances across state lines.

Barker argues that the district court abused its discretion on remand when it resentenced him to 316 months in prison—an upward durational departure. Barker

contends that, upon resentencing, he was “entitled to be re-sentenced to a bottom-of-the-box sentence under a correct criminal history score.”

In his motion to correct his sentence, Barker challenged only his criminal-history score for the Goodhue County convictions; he did not challenge the district court’s decision to impose an upward durational departure. Generally, appellate courts “will not decide issues which are not first addressed by the trial court and are raised for the first time on appeal.” *State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989); *see also Azure v. State*, 700 N.W.2d 443, 447 (Minn. 2005) (“It is well settled that a party may not raise issues for the first time on appeal from denial of postconviction relief.” (quotation omitted)). Because Barker raises this issue for the first time on appeal, we need not decide it.

Even if Barker had raised this issue during district court proceedings, we would reject his position based on the law-of-the-case doctrine, which provides that “when a court decides upon a rule of law, that decision should continue to govern the *same issues* in subsequent stages in the *same case*.” *Lynch v. State*, 749 N.W.2d 318, 321 (Minn. 2008) (quotation omitted) (applying the law-of-the-case doctrine to reject a postconviction claim considered on direct appeal). The supreme court recently applied the law-of-the-case doctrine to reject a motion to correct an appellant’s sentence based on a challenge that the supreme court had decided in an earlier appeal. *Townsend v. State*, 3 N.W.3d 13, 17 (Minn. 2024).

On direct appeal from Barker’s conviction and sentence, this court determined that Barker’s sentence of 316 months was an upward durational departure that was properly supported by one aggravating factor—danger to public safety. *Barker*, 2019 WL 272873,

at *8. This court relied on Minn. Stat. § 609.1095, subd. 2 (2014), reasoning that the statute “authorizes an upward sentencing departure for a violent felony conviction, up to the statutory maximum sentence, when an offender, who is at least 18 years old, has two or more prior convictions for violent crimes, and the fact-finder determines that the offender is a danger to public safety.” *Id.* This court reviewed the district court’s reasons for finding danger to public safety as an aggravating factor for Barker’s sentence for importing controlled substances across state lines and concluded that “the district court stated a valid reason for departure, which independently justified departure up to the statutory maximum of 35 years.” *Id.*

On remand, the district court relied on danger to public safety as an aggravating factor to impose an upward durational departure when sentencing Barker for importing controlled substances across state lines. Because we already determined that the district court did not abuse its discretion by relying on this aggravating factor, Barker’s second issue is barred by law of the case. *See Townsend*, 3 N.W.3d at 17.

Affirmed.