

*This opinion is nonprecedential except as provided by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
A26-0002**

Ryan Timothy Kellen, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 13, 2026
Affirmed
Smith, Tracy M., Judge**

Stearns County District Court
File No. 73-CR-20-376

Ryan T. Kellen, Faribault, Minnesota (self-represented appellant)

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief Deputy County Attorney, St. Cloud, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Schmidt, Judge; and Beane, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from the district court's order denying his motion to correct his sentence, appellant Ryan Timothy Kellen argues that the district court erred by (1) imposing multiple sentences for his multiple convictions of first-degree assault of a

peace officer, (2) making one of those sentences consecutive, and (3) departing from the sentencing guidelines without an aggravating factor found by a jury. We affirm.

FACTS

The facts underlying this case can be found in our opinion affirming Kellen's convictions in his direct appeal. *State v. Kellen*, No. A23-0716, 2024 WL 1506982 (Minn. App. Apr. 8, 2024), *rev. denied* (Minn. June 26, 2024). In brief, Kellen engaged in an hours-long standoff with police when they responded to his family home following a 911 call from his then-wife, whom he had physically assaulted. During the standoff, five members of a SWAT team approached the house in an armored vehicle and Kellen fired a gun at the vehicle, striking it.

A jury¹ found Kellen guilty of two counts of felony domestic assault in violation of Minnesota Statutes section 609.2242, subdivision 4 (2018), and five counts of first-degree assault of a peace officer, in violation of Minnesota Statutes section 609.221, subdivision 2(a) (2018). The district court imposed executed sentences of 120 months in prison for each of the five counts of first-degree assault.² The district court ordered one of the sentences to be served consecutively and the remainder to be served concurrently,

¹ Kellen originally pleaded guilty to one count of domestic assault and two counts of first-degree assault. He later moved to withdraw his pleas, and the district court denied his motion. On appeal, we reversed the denial of Kellen's motion and remanded for further proceedings. *State v. Kellen*, No. A21-0803, 2022 WL 1920595, at *3 (Minn. App. June 6, 2022).

² The district court also imposed a stayed sentence of 12 months and one day in prison for one of the domestic-assault counts, but that sentence that is not at issue in this appeal.

resulting in an aggregate sentence of 240 months. Kellen filed a motion for correction or reduction of his sentence, which the district court denied.

This appeal follows.

DECISION

The denial of a motion to correct a sentence is reviewed for an abuse of discretion. *Evans v. State*, 880 N.W.2d 357, 359 (Minn. 2016). The district court “abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Andersen v. State*, 913 N.W.2d 417, 422 (Minn. 2018).

Kellen argues that district court erred by (1) imposing multiple sentences for conduct that arose out of a single behavioral incident, (2) imposing a consecutive sentence, and (3) departing from the presumptive sentence without supporting facts found by a jury. We address each argument in turn.

1. Multiple Sentences

Kellen argues that the district court erred by imposing multiple sentences for the same conduct.

Minnesota law generally prohibits multiple punishments for multiple offenses arising out of the same conduct. Minn. Stat. § 609.035, subd. 1 (2018); *Sanders v. State*, 23 N.W.3d 86, 92 n.6 (Minn. 2025). However, “a person *can* be punished for multiple offenses occurring during the same behavioral incident if the offenses involve multiple victims.” *Sanders*, 23 N.W.3d at 92. But multiple sentences may not be imposed if they “unfairly exaggerate the criminality of the defendant’s conduct.” *State v. Skipin the day*, 717 N.W.2d 423, 426 (Minn. 2006).

Kellen was sentenced to five 120-month sentences for the five counts of first-degree assault. One of the sentences is consecutive; the rest are concurrent. The five counts correspond to the five officers in the armored police vehicle. Each one is a separate victim of the assault. *See State v. Ferguson*, 808 N.W.2d 586, 589-90 (Minn. 2012) (concluding, in the context of second-degree assault, that a defendant's firing of a gun into an occupied apartment resulted in multiple victims because each occupant was placed at risk of harm). Because there were multiple victims resulting from Kellen's conduct, multiple sentences could be imposed if the aggregate sentence of 240 months did not unfairly exaggerate the criminality of his conduct.

To determine whether multiple sentences unfairly exaggerate the criminality of a defendant's conduct, a court compares the aggregate sentence against the sentences received by other similar offenders in the past. *Sanders*, 23 N.W.3d at 93. Kellen bears the burden of showing that the sentence unfairly exaggerates the criminality of his conduct. *See State v. Hough*, 585 N.W.2d 393, 398 (Minn. 1998).

Kellen cites examples of sentences for convictions on multiple counts of first-degree assault against a peace officer. Kellen is correct that, in some of these cases, the defendant was sentenced concurrently on all counts and the aggregate sentence was less than 240 months. *See, e.g., State v. Leathers*, 799 N.W.2d 606, 608 (Minn. 2011) (concurrent 189-month sentences for five counts of first-degree assault against a peace officer); *State v. Carter*, No. A16-2056, 2018 WL 313077, at *2 (Minn. App. Jan. 8, 2018) (concurrent 120-month sentences for three counts of first-degree assault against a peace officer), *rev. denied* (Minn. Mar. 28, 2018); *State v. Machacek*, No. A13-0508, 2015 WL 4523505, at *1 (Minn.

App. June 29, 2015) (concurrent 120-month sentences for two counts of first-degree assault against a peace officer), *rev. denied* (Minn. Sept. 15, 2015). But Minnesota courts have also upheld consecutive 120-month sentences for two counts of first-degree assault against a peace officer in other cases. *See, e.g., State v. Richardson*, 670 N.W.2d 267, 284-85 (Minn. 2003); *State v. French*, No. A13-0062, 2014 WL 1271875, at *5 (Minn. App. Mar. 31, 2014), *rev. denied* (Minn. June 17, 2014).³ And Kellen has not shown that his conduct here—firing a weapon at a vehicle with five officers in it—is any different from that of other first-degree assaults against peace officers. Accordingly, he has failed to establish that his sentence unfairly exaggerates the criminality of his conduct.

The district court did not abuse its discretion by imposing multiple 120-month sentences, including a consecutive sentence resulting in an aggregate sentence of 240 months.

2. Consecutive Sentencing

Kellen argues that the district court erred by imposing a consecutive sentence because first-degree assault of a peace officer is not eligible for permissive consecutive sentencing under the Minnesota Sentencing Guidelines.

Appellate courts “will not disturb a district court’s decision to impose permissive consecutive sentences absent a clear abuse of discretion.” *State v. Vang*, 774 N.W.2d 566, 584 (Minn. 2009). The Minnesota Sentencing Guidelines state that, “[i]f the offender is being sentenced for multiple current felony convictions for crimes on the list of offenses

³ We note that nonprecedential opinions are not binding on this court, and we cite them here only for their persuasive authority. Minn. R. Civ. App. P. 136.01.

eligible for permissive consecutive sentences in section 6, the convictions may be sentenced consecutively to each other.” Minn. Sent’g Guidelines 2.F.2.a(1)(ii) (2018). The table in section 6 of the guidelines includes section 609.221—first-degree assault—as an offense eligible for permissive consecutive sentences. Minn. Sent’g Guidelines 6.

Kellen contends that, because section 6 does not list the specific subdivision of section 609.221 under which he was convicted, his conviction is not eligible for consecutive sentencing. We interpret the Minnesota Sentencing Guidelines de novo and apply the same principles that govern statutory construction. *State v. Woolridge Carter*, 9 N.W.3d 839, 843 (Minn. 2024). If the text is unambiguous, it must be applied as written. *State v. Dahlin*, 753 N.W.2d 300, 305 (Minn. 2008). The text is ambiguous only if it is subject to more than one reasonable interpretation. *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017).

Kellen’s interpretation of the guidelines is not reasonable. Section 6 lists section 609.221, without specifying any subdivisions. Minn. Sent’g Guidelines 6. Section 609.221 has two subdivisions. *See* Minn. Stat. § 609.221. There are no offenses within section 609.221 that do not fall under one of those two subdivisions. *See id.* The effect of Kellen’s reading would be to exclude all first-degree assault offenses from permissive consecutive sentencing. Such a result would contradict the guidelines’ express inclusion of section 609.221 in its list of offenses eligible for permissive consecutive sentences.

The only reasonable interpretation of the guidelines is that the offenses listed under each subdivision in section 609.221 are eligible for permissive consecutive sentences.

Kellen was convicted of first-degree assault under subdivision 2(a) of the statute. As a result, the district court had the discretion to sentence consecutively.

3. Departure

Kellen also argues that the imposition of a consecutive sentence was an upward departure from the presumptive sentence and that it lacked the support of aggravating facts found by a factfinder as required by *Blakely v. Washington*, 542 U.S. 296 (2004). The argument is unavailing. Because the guidelines provide for permissive consecutive sentences for first-degree assault of a peace officer, *see* Minn. Sent'g Guidelines 2.F.2.a(1)(ii), Kellen's consecutive sentence was not a departure and did not implicate *Blakely*.

Affirmed.