

*This opinion is nonprecedential except as provided by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
A26-0078**

Marlow Shelton McDonald, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 28, 2026
Affirmed
Cochran, Judge**

Blue Earth County District Court
File No. 07-CR-14-1678

Zachary A. Longsdorf, Longsdorf Law Firm, PLC, Inver Grove Heights, Minnesota (for appellant)

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

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Considered and decided by Worke, Presiding Judge; Cochran, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges the district court's order denying his motion to correct his sentence under Minnesota Rule of Criminal Procedure 27.03, subdivision 9, arguing that the district court abused its discretion when it concluded that he had not established that

his sentence was based on an incorrect criminal-history score. Because we discern no abuse of discretion by the district court in its decision related to appellant's criminal-history score and sentence, we affirm.

FACTS

The following summarizes the facts and procedural history relevant to this appeal. In 2014, a jury found appellant Marlow Shelton McDonald guilty of several crimes including: first-, second-, and third-degree controlled-substance crimes; fleeing an officer in a motor vehicle; unlawful possession of a firearm by a prohibited person; and being a prohibited person in possession of a firearm. *State v. McDonald*, No. A15-0268, 2016 WL 596222, at *1 (Minn. App. Feb. 16, 2016), *rev. denied* (Minn. Apr. 19, 2016) (*McDonald I*). The district court sentenced McDonald to an upward durational departure of 316 months' imprisonment for the first-degree controlled-substance offense, based on his status as a career offender. *Id.* at *2. The district court also imposed a concurrent 60-month prison sentence for the offense of being a prohibited person in possession of a firearm, a concurrent 57-month prison sentence for the third-degree controlled-substance crime, and a consecutive prison term of one year and one day for fleeing a peace officer. *Id.*

The district court used a criminal-history score of six points in determining the presumptive sentencing range for each of McDonald's sentences under the Minnesota Sentencing Guidelines. The six points included:

- One-half of a point for a 2012 conviction for drug possession;

- One-and-a-half points for a 2005 conviction for illegal possession of a firearm;
- One-half of a point for a 2005 conviction for possession of a controlled substance;
- One-half of a point for a separate conviction in 2005 for possession of a controlled substance;
- One-half of a point for a 2004 conviction for a controlled-substance crime;
- One point for a 2004 conviction of falsely impersonating another person;
- One-half of a point for a 2004 conviction for aggravated forgery; and
- One point for a burglary conviction in Illinois.

We affirmed McDonald's convictions and the aggravated sentence on direct appeal. *See id.* McDonald did not challenge his criminal-history score on direct appeal. *Id.*

Postconviction Petition

In 2017, McDonald petitioned for postconviction relief in which he sought to be resentenced under the newly enacted Minnesota Drug Sentencing Reform Act of 2016 (the DSRA). *McDonald v. State*, No. A18-0064, 2018 WL 3614669, at *2 (Minn. App. July 30, 2018) (*McDonald II*). The district court granted the petition and amended McDonald's sentence for the first-degree controlled-substance crime from 316 months' imprisonment down to 250 months' imprisonment. *Id.* McDonald challenged the district court's application of the DSRA to his new sentence on appeal. *Id.* at *2-3. However, McDonald did not challenge the inclusion of any felonies in his criminal-history score. *Id.* We affirmed his amended sentence. *Id.* at *4.

2020 Motion to Correct Sentence

In 2020, McDonald brought a motion to correct his sentence under Rule 27.03, subdivision 9, arguing that his criminal-history score was incorrect because he should have been sentenced using a criminal-history score of three points instead of six. *McDonald v. State*, No. A21-0361, 2021 WL 5561456, at *1 (Minn. App. Nov. 29, 2021), *rev. denied* (Minn. Feb. 23, 2022) (*McDonald III*). In his motion, he first argued that “he should not have been assigned separate points for his 2004 aggravated-forgery [and] [2004] false impersonation . . . convictions because they arose out of a single behavioral incident.” *Id.* Second, he argued that there was not an equivalent offense for his burglary conviction in Illinois and therefore he should not have been assigned a criminal point for that offense. *Id.* The district court denied McDonald’s motion. *Id.* Relevant to this appeal, the district court concluded that McDonald failed to show that his 2004 convictions of aggravated forgery and falsely impersonating another arose out of a single behavioral incident. *Id.* at *2.

McDonald appealed and we affirmed. *Id.* at *5. We concluded that the district court did not abuse its discretion when it determined that McDonald failed to show that his 2004 convictions for aggravated forgery and false impersonation arose out of a single behavioral incident. *Id.* We explained that, even assuming McDonald provided enough evidence to show he had a single criminal objective for both offenses, the district court “did not abuse its discretion when it determined that appellant had not shown that the two offenses were unified in time and place.” *Id.* at *3. We noted that the evidence filed by McDonald with his motion showed that the offenses occurred at different places and the record contained

no evidence regarding the sequence of events or how far apart in time the two offenses occurred. *Id.* Accordingly, we concluded that the district court did not abuse its discretion by denying McDonald's 2020 motion to correct his sentence. *Id.* at *2-5.

2025 Motion to Correct Sentence

In 2025, McDonald filed the motion to correct his sentence that is at issue in this appeal. In his motion, McDonald argued again that "it was improper to assess a point for both the [2004] falsely impersonating another and aggravated forgery convictions." And he claimed he had new "proof that those offenses were part of a single behavioral incident" and therefore his criminal-history score should be five rather than six. With his motion, McDonald filed additional evidence including evidence about the timing of the two offenses. He also filed an affidavit providing details about the date in question and stating that he used a false name on that date so his true identity would not be known.

The district court denied the motion, concluding that McDonald again failed to meet his burden to show the two 2004 offenses (falsely impersonating another and aggravated forgery) arose out of a single behavioral incident and therefore failed to meet his burden to show that his sentence was based on an incorrect criminal-history score. The district court reached this conclusion based on its determination that McDonald again failed to prove that the offenses were unified in time and place, even with the new evidence.

McDonald appeals.

DECISION

McDonald challenges the district court's denial of his 2025 motion to correct his sentence, arguing the district court abused its discretion when it concluded that McDonald failed to establish an error in his criminal-history score.

Under Rule 27.03, subdivision 9, a district court “may at any time correct a sentence not authorized by law.” Minn. R. Crim. P. 27.03, subd 9. “[S]entences must be based on correct criminal history scores, as these scores are the mechanism district courts use to ensure that defendants with similar criminal histories receive approximately equal sanctions for the same offense.” *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007). “[B]ecause a sentence based on an incorrect criminal history score is an illegal sentence,” a defendant may not forfeit review of a criminal-history score calculation. *Id.* But, under Rule 27.03, subdivision 9, “[a] defendant bears the burden of proof to demonstrate that a sentence was unlawful.” *Mason v. State*, 16 N.W.3d 828, 835 (Minn. App. 2025), *rev. denied* (Minn. Apr. 23, 2025).

“We review a district court’s denial of a motion to correct a sentence under rule 27.03 [subdivision 9] for an abuse of discretion.” *Id.* (quotation omitted). “Under this standard, we review the district court’s legal conclusions de novo and its factual findings for clear error.” *Id.* (quoting *Townsend v. State*, 834 N.W.2d 736, 738 (Minn. 2013)).

Similar to *McDonald III*, McDonald argues in this appeal that he demonstrated his criminal-history score is incorrect because it includes two points rather than one point for two 2004 offenses (impersonating another person and aggravated forgery) that arose out of a single behavioral incident and therefore the district court abused its discretion when it

concluded that he failed to meet his burden to prove that his sentence is based on an incorrect criminal-history score. In response, the state argues that McDonald did not establish that the crimes arose out of a single behavioral incident and the district court therefore did not abuse its discretion in denying his motion to correct his sentence. We agree with the state.

We begin our analysis by summarizing the law governing criminal-history scores. Under the Minnesota Sentencing Guidelines, a defendant's criminal-history score is used to determine the presumptive sentence for a felony conviction. *See* Minn. Sent'g Guidelines 2.C.1 (2024). A criminal-history score is the "sum of points" that are assigned for eligible prior offenses and the defendant's custody status at the time of the instant offense. Minn. Sent'g Guidelines 2.B, 4.A (2024). The criminal-history points assigned to a prior felony conviction depends on the type and severity level of the prior offense. Minn. Sent'g Guidelines 2.B.1. Generally, "the offender is assigned a particular weight for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing." Minn. Sent'g Guidelines cmt. 2.B.101. But if multiple offenses arose out of a single course of conduct, only the offense at the highest severity level should be considered in calculating the criminal-history score. Minn. Sent'g Guidelines cmt. 2.B.107.

The sentencing guidelines' treatment of multiple offenses arising out of a single course of conduct is derived from Minnesota Statutes section 609.035, subdivision 1 (2024). This statute generally prohibits the district court from imposing multiple sentences if a person's conduct constitutes more than one offense under the laws of the state. *See*

Minn. Stat. § 609.035, subd. 1; *State v. Kebaso*, 713 N.W.2d 317, 322 (Minn. 2006) (stating section 609.035 “prohibits multiple sentences, even concurrent sentences, for two or more offenses that were committed as part of a single behavioral incident”); *see also State v. Drljic*, 876 N.W.2d 350, 353 n.1 (Minn. App. 2016) (stating that the phrase “single course of conduct” has the same meaning as the phrase “single behavioral incident”).

“Offenses are part of a single course of conduct if the offenses occurred at substantially the same time and place and were motivated by a single criminal objective.” *State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014) (citation omitted); *see also Drljic*, 876 N.W.2d at 353 (noting that, to determine whether offenses occurred during a single course of conduct, district courts consider “time, place, and whether the offenses were motivated by a desire to obtain a single criminal objective”). The determination of whether multiple offenses are part of a single course of conduct “depends on the facts and circumstances of the particular case.” *State v. Bookwalter*, 541 N.W.2d 290, 294 (Minn. 1995).

With this legal framework in mind, we turn to the specific issue before us: whether the district court abused its discretion when it denied McDonald’s 2025 motion to correct his sentence. As discussed above, McDonald moved the district court to correct his sentence under Rule 27.03, subdivision 9, arguing that he was incorrectly assigned a criminal-history score of six because it included points for each of two offenses (false-impersonation and aggravated-forgery crimes) that occurred on the same day and “were part of a single behavioral incident.” The district court denied McDonald’s motion based on its conclusion that McDonald failed to meet his burden to show that the offenses

were part of the same behavioral incident. In reaching this conclusion, the district court considered the time and place of the offenses, as well as McDonald's criminal objective. The district court concluded that, even if McDonald was motivated by a single criminal objective—to avoid being identified by his real name—the offenses did not occur at the same time or in the same place. The district court noted that McDonald signed a false name on a fingerprint card—the basis for the forgery charge—at the jail at approximately 6:15 a.m. on January 10, but did not give a false name at the courthouse—the basis for the false-impersonation charge—until shortly before 5:00 p.m. on the same day. The district court reasoned that the two acts, which “occurred more than 10 hours apart,” did not show unity of time.

The district court also noted that McDonald's acts occurred at two separate locations. McDonald signed the fingerprint card at the jail and gave a false name at the courthouse. The district court determined that the acts did not demonstrate unity of place because these acts occurred “in separate buildings located eight-tenths of a mile apart.” Given the offenses did not occur at “substantially the same time and place,” *Jones*, 848 N.W.2d at 533, the district court concluded that McDonald did not meet his burden to demonstrate that the two offenses arose from a single behavioral incident and denied McDonald's motion to correct his sentence. We discern no abuse of discretion in the district court's ruling.

We begin with the timing of the offenses. The district court found that McDonald provided a false name at the courthouse nearly ten hours after he provided a false name at the jail. The record evidence filed by McDonald supports this finding. The evidence shows

that McDonald was arrested just before 4:00 a.m. on January 10, 2003. McDonald was transported to the law enforcement center and was booked into jail at 6:15 a.m. that morning. During his booking, McDonald gave a false name and signed that alias to his fingerprint card. It was not until more than ten hours later, around 5:00 p.m., that McDonald used the false name at the courthouse and signed an Advice of Rights Sheet using the alias. In light of this record, we discern no abuse of discretion in the district court's determination that McDonald's offenses did not occur at substantially the same time. We conclude this factor supports the district court's decision.

Turning to the location of the offenses, the district court found that McDonald committed the offenses at different locations because he provided a false name at the jail and signed the Advice of Rights sheet at the courthouse. Again, the record supports this finding. As McDonald acknowledges, the jail and the courthouse are located in different buildings approximately eight-tenths of a mile apart. The location factor also supports the district court's determination that the two offenses at issue were not part of a single behavioral incident.

To persuade us otherwise, McDonald identifies two cases that he argues supports his position that the offenses arose from the same behavioral incident. This argument is unavailing.

First, McDonald cites *Langdon v. State*, 375 N.W.2d 474 (Minn. 1985). In *Langdon*, the defendant was convicted of four separate counts of burglary for stealing money from laundry machines located in different buildings in the same apartment complex. *Id.* at 475. The district court sentenced Langdon on each burglary count. *Id.*

Langdon subsequently filed a postconviction petition, arguing in part that he should have received only one sentence for the four burglary convictions because all four convictions arose from a single behavior incident or course of conduct. *Id.* On review, the supreme court agreed, emphasizing that Langdon’s criminal objective “was to steal as much money as he could that afternoon from the coin boxes on the washers and dryers in the several laundry rooms within the apartment complex.” *Id.* at 476. The supreme court noted that “[i]f petitioner had burglarized a number of residences owned by a number of different people in a single afternoon or if he had burglarized the apartments of a number of different people, then multiple punishment might well have been proper.” *Id.*

McDonald argues the supreme court’s conclusion in *Langdon* supports his position that he demonstrated that his offenses of falsely impersonating another and aggravated forgery were part of a single behavioral incident because both crimes took place in “government buildings” and he had “no control” over his location. This argument is not persuasive because the facts of this case are distinguishable from *Langdon*. In *Langdon*, the burglaries were committed over the course of a single afternoon and involved buildings in the same apartment complex. *Id.* at 475. Here, by contrast, McDonald’s offenses occurred more than ten hours apart and at locations that were almost a mile apart. Given these factual distinctions, McDonald’s reliance on *Langdon* is misplaced.

We are likewise unpersuaded by McDonald’s citation to *State v. McAdoo*, 330 N.W.2d 104 (Minn. 1983), on which McDonald relies even though the supreme court concluded in *McAdoo* that the defendant’s crimes *did not* arise out of a single course of conduct. In *McAdoo*, the defendant was found guilty of robbery in 1981 and sentenced

based on a criminal-history score of six or more. *Id.* at 105-06. On appeal, defendant argued that the district court erred in its calculation of his criminal-history score because four of his criminal-history score points were from Illinois “offenses [that] were part of a single behavioral incident” and “therefore he should be given a maximum of two felony points for the entire course of conduct.” *Id.* at 108. That Illinois conduct involved “a multiple-victim robbery and shoot-out with police.” *Id.* The defendant maintained that his Illinois offenses should be considered a single course of conduct because he was attempting to avoid apprehension by the police at the time of the robbery. *Id.* The state argued in response that the defendant was not solely interested in escaping apprehension but also wanted to “get” the police. *Id.* The supreme court agreed with the state. *Id.* at 109. It determined that the “[d]efendant’s conduct was not motivated solely by a desire to avoid apprehension but represented an escalation of the incident to a far more serious level.” *Id.* Consequently, the supreme court concluded that the district court “was correct in its determination that the defendant’s actions constituted a divisible, not unitary, course of conduct and therefore accrued four, not two, criminal history points.” *Id.*

Although the supreme court concluded in *McAdoo* that the crimes were not part of a single course of conduct, McDonald contends that the supreme court’s analysis in *McAdoo* supports his position that his crimes of falsely impersonating another and forgery *were part* of a single course of conduct because he was motivated “at all relevant times” by a desire to avoid disclosing his real name. McDonald claims that he did not escalate or deviate from that intent—as did the defendant in *McAdoo*—and his actions therefore constitute a single course of conduct. We do not agree. Even assuming McDonald’s

actions were motivated by a single criminal objective, he must also show that the offenses “occurred at substantially the same time and place.” *Jones*, 848 N.W.2d at 533. As discussed in more detail above, the evidence provided by McDonald demonstrated that McDonald’s offenses did not share a common time or common location. Consequently, McDonald’s reliance on *McAdoo* is not persuasive.

In sum, we conclude that the district court did not abuse its discretion by determining that McDonald failed to meet his burden to prove that his sentence was based on an incorrect criminal-history score. We therefore affirm the district court’s denial of McDonald’s motion to correct his sentence.

Affirmed.