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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1629**

State of Minnesota,
Respondent,

vs.

Christopher Lee Tate,
Appellant.

**Filed July 16, 2012
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-10-26060

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

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Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Collins,
Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his indictment, conviction, and sentence for first-degree criminal sexual conduct. Appellant argues that his constitutional right to a fair trial was violated because the jury received evidence that suggested that he had a prior criminal-sexual-conduct conviction; the district court abused its discretion in allowing the jury to view a video recording of appellant placing his hand on his crotch; the evidence is insufficient to establish probable cause and proof beyond a reasonable doubt that appellant was in a position of authority over the victim; and the district court erred in imposing a mandatory life sentence because it was based on appellant's receipt of a purportedly illegal sentencing departure on a prior criminal-sexual-conduct conviction. We affirm.

FACTS

Respondent State of Minnesota charged appellant Christopher Lee Tate with two counts of first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct. Later, a grand jury indicted Tate for three counts of first-degree criminal sexual conduct and one count of third-degree criminal sexual conduct. The case was tried to a jury, and the evidence established the following facts.

On June 5, 2010, 15-year-old R.R. and 14-year-old C.T. went to C.T.'s house. R.R. waited on the porch while C.T. asked Tate, his father, if R.R. could come into the house. Tate gave permission for R.R. to enter the house. Tate asked R.R. her name and

age. Shortly thereafter, Tate left the house. R.R. and C.T. watched a movie. Later, R.R. fell asleep on the couch, and C.T. fell asleep on the floor.

Tate returned home around midnight, woke C.T. and R.R., and told R.R. that she could not sleep on the couch. Tate told R.R. to sleep in his bedroom. R.R. went into Tate's bedroom and fell asleep on the bed. C.T. remained on the living room floor. Later, C.T. saw Tate go into the bedroom. C.T. knocked on the bedroom door but there was no response, so he lay back down on the living-room floor.

After Tate entered his bedroom, he got into bed with R.R., put his hand under her shirt, and touched her breast. R.R. was frightened. She was facing the wall and did not know who was touching her. Tate pulled down R.R.'s pants. R.R. tried to push Tate's hands away and moved closer to the wall. Tate grabbed R.R. around the stomach, held her tightly, and pulled her closer to him. Tate touched R.R.'s vagina and tried to put his penis into her vagina. R.R. tried to get away from Tate, but Tate pushed R.R. onto her stomach and put his penis inside her anus. R.R. was crying and told Tate to stop. During the course of the assault, R.R. recognized her assailant as C.T.'s father.

R.R. eventually was able to escape the assault. She jumped out of bed and pulled up her pants. She left Tate's bedroom and went to the front door of the house, but she could not unlock it. C.T. saw R.R. and Tate emerge from the bedroom five to ten minutes after he saw Tate enter the bedroom. Tate told C.T. to "stay down" as he unlocked the front door and let R.R. onto the porch. Once on the porch, Tate told R.R. that she could not leave because it was late and the police would see her. He held her arm and told her to go back inside. R.R. went back inside of the house, and Tate told her

to go back into his bedroom. Next, Tate told C.T. to go into the bedroom with R.R. When C.T. did so, R.R. asked C.T. for a cell phone to call her mother, but C.T. did not have a cell phone. R.R. left the house at 7 a.m.

Shortly after R.R. left Tate's home, she ran into an ex-boyfriend and immediately told him about the assault. He told his father, who telephoned R.R.'s mother. R.R.'s mother called the police, and they went to R.R.'s house. R.R. told the police what had happened, and the police took R.R. to the hospital for a sexual-assault examination. C.T., who had gone to R.R.'s house looking for her, also talked to the police.

The police obtained a search warrant for a sexual-assault examination, which authorized them to collect buccal and penile swabs from Tate. The police arrested Tate and transported him to the police station. There, an officer advised Tate of the search warrant and the process that would be followed to obtain the samples. The ensuing discussion between the officer and Tate, as well as Tate's conduct after the discussion, were recorded. The police transported Tate to a hospital, and a nurse collected the samples. Forensic analysis showed that Tate's penile swab contained a mixture of male and female DNA, Tate and R.R. could not be excluded as possible sources of the DNA, but 99.9999992% of the population could be excluded.

The jury returned guilty verdicts on all of the charges in the indictment, and the district court sentenced Tate to life in prison under Minn. Stat. § 609.3455, subd. 4(a)(2)(ii) (2008). This appeal follows.

D E C I S I O N

Tate makes four claims of error in his appeal. His first two arguments regard the audio-visual recording of Tate's discussion with the police at the police station and Tate's conduct following the discussion. Tate argues that the district court erred in allowing the jury to receive a portion of his recorded discussion because it implied that he had a prior criminal conviction. Tate also argues that the district court abused its discretion by admitting the recording into evidence because it showed Tate "placing his hand on his crotch" after the police told him that they would be collecting penile swabs from him. Tate's third argument is that the evidence is insufficient to show that he was in a position of authority over R.R. and to thereby sustain counts one and two of the indictment and the associated convictions. Lastly, Tate argues that the district court erred by imposing a mandatory life sentence. We address each of Tate's arguments in turn.

I.

Tate argues that the district court erred in allowing the jury to receive a portion of his recorded discussion at the police station because it implied that Tate had a prior conviction. Before trial, Tate moved to exclude evidence of "[a]ny reference or mention of [Tate's] guilty plea and conviction for criminal sexual conduct in the fourth degree in 1994 and/or 2007, his probation status, or participation in Alpha Human Services Program." The state agreed not to mention Tate's prior convictions, and the district court granted Tate's motion to exclude this evidence.

At trial, the state offered the audio-visual recording of Tate's discussion with the police regarding the sexual-assault-examination search warrant. Before the recording

was played for the jury, Tate's counsel informed the district court that during the discussion, Tate stated that he was a convicted sex offender and that his DNA was on file. Counsel also stated that she believed that the state had redacted this statement from the recording, consistent with the district court's evidentiary ruling. The prosecutor informed the court and counsel that her legal assistant had redacted the portion of Tate's statement regarding his prior conviction and DNA sample. The prosecutor provided the redacted recording to the court and added, "If I've missed something, when the court reviews it, I'm happy to have the redactions done, but I don't think there's anything else in there that would be an issue." The prosecutor also told Tate's counsel the exact times when the redaction began and ended on the recording, so counsel could review the extent of the redaction on her copy of the recording.

The recording was played for the jury. The objectionable portion follows:

OFFICER: But we do have a search warrant. I'll show you a copy of it. And what's going to happen here is I'm going to take a buccal swab from you here, okay?

TATE: Uh-huh.

OFFICER: And then, you're going to be taken down to the hospital.

TATE: Uh-huh.

OFFICER: And you're going to go (unintelligible) have you ever provided a sexual exam kit? Yeah. We're still going to get fresh samples.

TATE: All right.

OFFICER: Just to let you know. And we're going to obviously have to swab your—your privates and all that stuff. All that kind of thing.

The day after the recording was played for the jury, Tate's counsel informed the district court and the prosecutor that she did not think that the recording had been

adequately redacted because she believed she had heard Tate “say—make a comment about—I’m not exactly sure what he said, but the officer . . . said, ‘Oh, well, we need a fresh sample.’” The district court judge informed the attorneys that he did not recall hearing such a statement on the recording that was played for the jury, but that if the recording contained the statement, it was harmless. The district court judge also stated that the recording would not go into the jury room, but if the jury requested a second opportunity to view it, it would be played in the courtroom in the presence of Tate and counsel.

During deliberations, the jury asked to review the recording. Tate’s counsel told the court she did not object to the jury watching the recording, but she wanted it redacted “so they don’t hear [Tate] making a comment about a sample already being on file.” The prosecutor stated that she did not believe that the recording contained such a statement. The prosecutor suggested that the district court play the recording to determine what was actually said. The district court agreed, played the recording twice, and stated: “I didn’t hear any reference to the statement, ‘My sample is on file,’ indicating that he might have provided a sample in the past. At best, there’s a reference to, ‘We need a fresh one,’ and I don’t find that to be particularly harmful.” The district court played the recording for the jury without further redaction, over defense counsel’s objection.

Tate argues that the implication “of a prior criminal sexual conduct conviction denied [Tate] his constitutional right to a fair trial.” The constitutions of the United States and the State of Minnesota guarantee a criminal defendant the right to due process. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. The “[d]ue process guarantees in

our state and federal constitutions include the right to a fair trial.” *Spann v. State*, 704 N.W.2d 486, 493 (Minn. 2005). We review constitutional issues raising due-process concerns de novo. *State v. Heath*, 685 N.W.2d 48, 55 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004).

Evidence from which a jury could infer that a defendant has a criminal record is generally inadmissible. *State v. Richmond*, 298 Minn. 561, 563, 214 N.W.2d 694, 695 (1974). But “[t]he constitutional right to a fair criminal trial does not guarantee a perfect trial.” *State v. Clark*, 486 N.W.2d 166, 170 (Minn. App. 1992). “Where . . . a reference to a defendant’s prior record is of a passing nature, or the evidence of guilt is overwhelming, a new trial is not warranted because it is extremely unlikely that the evidence in question played a significant role in persuading the jury to convict.” *Id.* (quotations omitted); *see State v. Hall*, 764 N.W.2d 837, 842-43 (Minn. 2009) (no new trial warranted where district court refused defendant’s “request to redact his statement during the police interrogation where he appeared to reveal that he had a prior fifth-degree assault conviction” and “the reference to the prior imprisonment was of a passing nature”).

Tate argues that the officer’s question and comment regarding Tate’s prior sexual-examination kit implied that Tate had a prior conviction for criminal sexual conduct. We disagree. The remark is vague and lacks detail. It does not indicate whether Tate provided the sample as a suspect or complainant, whether he was arrested, or whether he was charged. *Compare Clark*, 486 N.W.2d at 170 (“[T]he challenged phrase [‘from a past incident’] was only a passing remark that could have described many types of

interactions between [the defendant] and police.”), with *State v. Hjerstrom*, 287 N.W.2d 625, 628 (Minn. 1979) (holding that it was error for the district court to allow testimony referring to the defendant’s time in Stillwater prison). Moreover, the remark was made in passing. It was a small portion of a short, recorded discussion that was played twice during a multi-day trial. In fact, the remark within the discussion may well have been missed by the jury: we observe that Tate’s counsel expressed uncertainty regarding what she had heard when the recording was first played for the jury. The prosecutor did not refer to the remark during the trial, and Tate did not request a curative instruction, consistent with the passing nature of the remark. See *State v. Haglund*, 267 N.W.2d 503, 506 (Minn. 1978) (noting “that such an instruction might have emphasized [an objectionable] portion of [a] statement . . . [because] the statement was of a passing nature, the import of which might have been missed by the jury”).

We also observe that the evidence of Tate’s guilt was overwhelming. R.R. testified regarding the sexual assault and identified Tate as the perpetrator. C.T.’s testimony confirmed that Tate entered the bedroom where R.R. was sleeping and that Tate and R.R. emerged five to ten minutes later. Forensic analysis showed that a penile swab obtained from Tate contained a mixture of male and female DNA and that Tate and R.R. could not be excluded as a possible source of the DNA—unlike the remaining 99.9999992% of the population. Thus, it is extremely unlikely that the vague reference to Tate’s prior sexual-examination kit played a significant role in persuading the jury to convict. We therefore reject Tate’s argument that a new trial is warranted based upon the passing remark regarding his prior sexual-examination kit.

II.

Tate argues that the district court abused its discretion by admitting the recording of his conduct at the police station into evidence, because it showed Tate “placing his hand on his crotch,” and because the “evidence was at best of minimal probative value and was clearly outweighed by the danger of unfair prejudice by arousing the jury’s passion . . . because he was fondling himself.” “Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted).

After the officer informed Tate that he intended to take buccal and penile swabs and left the room, Tate placed his hands inside his shorts. Two officers observed the conduct from outside of the room on a video monitor. One of the officers testified that “it appeared that [Tate] was trying to wipe off evidence from his penis.”

Before trial, Tate sought to exclude “[a]ny reference or mention of [Tate’s] physical conduct during the recorded [police] interview.” Tate’s counsel clarified that she was not moving the court to exclude the recording from evidence. Rather, she sought to prevent one of the officers from giving his opinion that Tate was “fondling himself,” as well as references to “consciousness of guilt.” Tate’s counsel argued:

I think the jury can see the tape and—and make their own decision, but if the State improperly highlights it and refers to it as consciousness of guilt, I think that tips the scale under 403 and I think it would be—the probative value would be substantially outweighed by the danger of unfair prejudice.

The prosecutor opposed the motion, arguing that the recording showed Tate attempting to destroy evidence and, therefore, demonstrated his consciousness of guilt.

Evidence must be relevant to be admissible. Minn. R. Evid. 402. “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401. Evidence suggesting consciousness of guilt is relevant and admissible against a defendant. *State v. McDaniel*, 777 N.W.2d 739, 746 (Minn. 2010) (stating that evidence of flight can suggest consciousness of guilt). But “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Minn. R. Evid. 403. “Evidence that is probative, though it may arouse the passions of the jury, will still be admitted unless the tendency of the evidence to persuade by illegitimate means overwhelms its legitimate probative force.” *State v. Schulz*, 691 N.W.2d 474, 478-79 (Minn. 2005).

The district court concluded that the evidence was relevant and admissible, because it suggested Tate’s consciousness of guilt. The district court ruled that the prosecutor could refer to consciousness of guilt. The district court explained its reasoning as follows:

On the video recording in the police interview room, [Tate] can be seen putting his hand in his pants and touching his penis. When viewed alone, this conduct does not appear to suggest anything other than [Tate] arousing himself. However, when viewed in the context of what occurred

before [Tate] put his hands in his pants, [Tate's] conduct takes on a different meaning. Before being left alone in the police interview room, an officer gave [Tate] a warrant that authorized buccal and penile swabs and told [Tate] his penis would be swabbed. This context suggests [Tate] may have been attempting to wipe off substances on his penis, that is, destroy evidence on his penis, before his penis was swabbed. To be relevant, the court need not find that [Tate's] conduct is consciousness of his guilt, but rather that the jury could interpret his conduct to be consciousness of his guilt. Because [Tate's] conduct is relevant on the issue of [Tate's] consciousness of guilt, it is admissible on those grounds.

The court also reasoned that the evidence's probative value was not substantially outweighed by any danger of unfair prejudice. The district court explained that:

The sexual nature of [Tate's] physical conduct in the interview room has the potential to arouse the passions of the jury. However, the tendency of this evidence to persuade by illegitimate means does not appear to overwhelm its legitimate probative force. The evidence is offered for the legitimate purpose of showing [Tate's] consciousness of guilt, and therefore has high probative value. Because the unfair prejudicial effect of the evidence of [Tate's] physical conduct in the interview room does not substantially outweigh its probative value, the evidence is admissible.

The district court's analysis is sound. First, the evidence was relevant. The jury had to determine whether Tate sexually assaulted R.R. At trial, Tate testified that he used the bathroom around 3 a.m., forgot R.R. was in his bedroom, went into the bedroom, and lay down on the bed. He further testified that he rolled over in bed to open a window and bumped into R.R. She sat up in bed and left the room. Tate testified that he followed her and apologized. In sum, Tate denied that he had sexual contact with R.R. Evidence of Tate's efforts to remove or destroy evidence of sexual contact that might be on his penis was relevant because it suggested consciousness of guilt—that he had penile contact with

R.R. See *State v. Roy*, 408 N.W.2d 168, 171-72 (Minn. App. 1987) (“Evidence of [the defendant’s] efforts to destroy the crime scene . . . was probative as circumstantial evidence of [his] consciousness of guilt . . .”), *review denied* (Minn. July 22, 1987).

Second, the evidence’s probative value was not significantly outweighed by the danger of unfair prejudice. In support of his contention to the contrary, Tate cites *State v. Harris*, 521 N.W.2d 348, 351-52 (Minn. 1994). But the evidence in this case is quite distinct from that in *Harris*, where the defendant stood naked in his cell and masturbated to a newspaper photo of his alleged victim in view of other inmates. *Id.* at 353. Here, the evidence is far less inflammatory. Moreover, unlike *Harris*, the evidence in this case had probative value. *Cf. id.* (stating that the evidence of Harris masturbating to a photograph of the victim had no probative value). Although the evidence was prejudicial, the danger of unfair prejudice did not outweigh the probative value of the evidence. Thus, the district court did not abuse its discretion in receiving the recording as evidence at trial.

III.

Tate argues that the district court erred in denying his motion to dismiss counts one and two of the indictment and further argues that the evidence is insufficient to sustain his convictions on these counts because the evidence presented to the grand jury and at trial failed to establish probable cause and proof beyond a reasonable doubt that he was in a “position of authority” over R.R. at the time of the assault, which is an element of the charged offenses. See Minn. Stat. § 609.342, subd. 1(b) (establishing “position of authority” as an element of first-degree criminal sexual conduct). He contends that “[t]he

evidence presented to the grand jury and at trial established that [he] was not, as a matter of law, in a ‘position of authority’ over the fifteen-year-old complainant.”

“The grand jury may find an indictment if the evidence establishes probable cause to believe an offense has been committed and the defendant committed it.” Minn. R. Crim. P. 18.05, subd. 2. A defendant may move for dismissal of a grand jury indictment if “[t]he evidence admissible before the grand jury was not sufficient to establish an offense charged.” Minn. R. Crim. P. 17.06, subd. 2(1)(a). A motion to dismiss a grand jury indictment for insufficient evidence is thus, in effect, a motion to dismiss for lack of probable cause. *See State v. Plummer*, 511 N.W.2d 36, 38 (Minn. App. 1994) (“[T]he standard of review of the dismissal of an indictment is not ‘clear and unequivocal error’ on the part of the [district] court. The proper focus of inquiry is the grand jury’s determination of probable cause to believe the alleged offenses occurred, with deference to the grand jury’s factfinding role.”). “Probable cause to support a criminal charge exists when the evidence worthy of consideration brings the charge against the prisoner within reasonable probability.” *In re Welfare of C.T.L.*, 722 N.W.2d 484, 490 (Minn. App. 2006) (quotations omitted). “A criminal defendant bears a heavy burden when seeking to overturn a grand jury indictment, especially when the challenge is brought after the defendant has been found guilty beyond a reasonable doubt following a fair trial.” *State v. Johnson*, 463 N.W.2d 527, 531 (Minn. 1990); *see also State v. Lynch*, 590 N.W.2d 75, 79 (Minn. 1999) (stating that a defendant convicted after a fair trial bears a heightened burden).

In considering a claim of insufficient evidence to support a conviction, this court's review "is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction," is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Counts one and two of the indictment require proof that "the complainant is at least 13 years of age but less than 16 years of age and the actor is more than 48 months older than the complainant and *in a position of authority over the complainant.*" Minn. Stat. § 609.342, subd. 1(b) (2008) (emphasis added).

"Position of authority" includes *but is not limited to* any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act.

Minn. Stat. § 609.341, subd. 10 (2008) (emphasis added).

The crux of Tate's argument is that he "was not [R.R.'s] parent" and thus as a matter of law "could only be in a 'position of authority' if he was 'acting in place of a parent' and 'charged with' any 'of a parent's rights, duties, or responsibilities to a child,'

or if he was a person ‘charged with’ any ‘duty or responsibility for the health, welfare, or supervision of a child, either independently or through another.’” He asserts that none of these requirements was satisfied and that he therefore was not in a position of authority over R.R. at the time of the offense.

Tate presents an extensive statutory-construction argument regarding why none of the statutory examples applies here. But the statute clearly states that it is “not limited to” the examples described therein. Moreover, this court has held that “the circumstances in which a person is in a position of authority are not limited to the examples of position of authority described in [the statute], . . . [that] position of authority is broadly defined under this statute, and that the statutory definition does not contain an exclusive list of persons in a position of authority.” *State v. Rucker*, 752 N.W.2d 538, 546 (Minn. App. 2008) (quotations and citations omitted), *review denied* (Minn. Sept. 23, 2008). We therefore do not address Tate’s argument regarding how the statutory examples should be construed.

As to the statutory definition, “[p]osition’ indicates either a person’s social standing or employment while ‘authority’ refers to the ‘power to enforce laws, exact obedience, command, determine, or judge.’” *State v. Mogler*, 719 N.W.2d 201, 207 (Minn. App. 2006). Here, Tate’s position was based on his social standing as an adult who authorized his son’s minor friend, R.R., to spend the night at his home. Tate describes the contact and resulting relationship between Tate and R.R. as “brief and de minimus” and as “nondescript.” We disagree.

C.T. testified before the grand jury and at trial that he obtained permission from Tate before R.R. was allowed to enter Tate's house. C.T. further testified that when Tate returned home, he directed R.R. not to leave the house and to sleep in his bedroom. R.R. testified before the grand jury and at trial that when she tried to leave after the assault, Tate told her that it was too late for her to walk home and that she should sleep in his bedroom. Any reasonable person would understand that Tate was in a "position of authority" over R.R. because R.R. was C.T.'s minor friend, Tate allowed her to spend the night at his residence, and Tate exercised control over her ability to leave during the night and where she slept during the night. Given the broad definition of "position of authority" that this court utilizes, these facts support a determination that Tate was in a position of authority over R.R. Thus, the district court did not err by denying Tate's motion to dismiss counts one and two of the indictment, and the evidence is sufficient to sustain the guilty verdicts on those counts.

IV.

Tate challenges his life sentence, arguing that "the district court made an error of law by interpreting Minn. Stat. § 609.3455 as requiring imposition of a life sentence when the required 'upward durational departure' was illegal/invalid." We generally review sentencing decisions for an abuse of discretion. *See State v. Geller*, 665 N.W.2d 514, 516 (Minn. 2003) ("We review a sentencing court's departure from the sentencing guidelines for abuse of discretion."). But under Minn. Stat. § 609.3455, the district court's discretion is limited: the district court must impose a life sentence if certain statutory requirements are met. *See* Minn. Stat. § 609.3455, subd. 4(a)(2)(ii) (providing

that the district court “shall sentence a person to imprisonment for life if the person is convicted of [first-degree criminal sexual conduct],” “the person has a previous sex offense conviction,” and “the person received an upward durational departure from the sentencing guidelines for the previous sex offense conviction”). Because the sentencing decision in this case involves application of a statute to undisputed facts, our review is de novo. *See State v. Johnson*, 743 N.W.2d 622, 625 (Minn. App. 2008) (“Application of a statute to the undisputed facts of a case involves a question of law, and the district court’s decision is not binding on this court.”).

Tate was charged by indictment with four counts of criminal sexual conduct. Counts two, three, and four included a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4(a)(2)(ii). Count one included a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4(a)(2)(i) (2008) (requiring a mandatory life sentence if “the person has a previous sex offense conviction” and “the fact finder determines that the present offense involved an aggravating factor that would provide grounds for an upward durational departure under the sentencing guidelines other than the aggravating factor applicable to repeat criminal sexual conduct convictions”). Following Tate’s convictions on all counts, the jury found the existence of an aggravating factor on count one. As to counts two, three, and four, the prosecutor submitted documentation showing, and the district court found, that Tate had a prior sex-offense conviction and that he received an upward durational departure from the sentencing guidelines for the conviction. The district court therefore sentenced Tate to a term of life imprisonment with the possibility

of parole after 234 months on count two and determined that counts one, three, and four merged with count two.

In 2006, Tate pleaded guilty to a reduced charge of fourth-degree criminal sexual conduct and was convicted pursuant to his plea of guilty. Tate was sentenced on the conviction in 2007. In exchange for his plea to the reduced charge, Tate and the state agreed to a double-upward durational departure from 21 to 42 months; the parties referenced injury to the victim as the supporting aggravating factor. Tate now contends that the 2007 upward departure was invalid, arguing that “[w]here the only reason given by the court at sentencing for the ‘upward durational departure’ in [Tate’s] prior conviction was an impermissible reason—‘agreement of the parties’—that departure cannot provide the basis for imposing a mandatory life sentence in this case.”

There are several methods by which Tate could have challenged his 2007 upward sentencing departure, including direct appeal, a postconviction petition for relief, or a motion to correct an illegal sentence under Minn. R. Crim. P. 27.03. *See* Minn. R. Crim. P. 27.03, subd. 9 (“The court may at any time correct a sentence not authorized by law.”); *State v. Fields*, 416 N.W.2d 734, 736 (Minn. 1987) (holding that a defendant could challenge an upward durational departure for the first time by moving for modification of his sentence at a revocation hearing on the sentence). But Tate did not pursue any of these options. Instead, he generally asserted, at the sentencing hearing in the current case, that his 2007 sentencing departure was illegal, without moving the district court to correct the sentence. Tate presents no authority suggesting that he may collaterally attack his 2007 sentence at the sentencing hearing in the current case. In fact, caselaw suggests

that the approach is improper. *See State v. Romine*, 757 N.W.2d 884, 889-90 (Minn. App. 2008) (“As a general rule, a party’s failure to appeal the issuance of a court order precludes a collateral attack on that order in a subsequent proceeding.”); *State v. Harrington*, 504 N.W.2d 500, 502-03 (Minn. App. 1993) (holding that the law-of-the-case doctrine precludes a defendant who failed to appeal a harassment restraining order in the case in which it was issued, from challenging the constitutionality of that order in a subsequent criminal prosecution for violating it), *review denied* (Minn. Sept. 30, 1993).

The plain language of Minn. Stat. § 609.3455, subd. 4(a)(2)(ii) provides that if certain conditions or prerequisites are met, then the district court must sentence the offender to life imprisonment. Here, the record shows that the prerequisites were met: Tate was convicted of first-degree criminal sexual conduct, he has a prior sex-offense conviction, and he received an upward durational departure for the prior conviction. The statute does not direct the district court to examine the legality of the prior sentencing departure or to determine whether the departure was supported by a valid aggravating factor. And this court will not read such a requirement into the statute. *See* Minn. Stat. § 645.16 (2008) (“When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.”).

In sum, because the statutory requirements for a life sentence under Minn. Stat. § 609.3455, subd. 4(a)(2)(ii) were met, the district court was mandated to impose a life sentence and did not err in doing so.

Affirmed.