

Sex Trafficking & Prostitution Review

Case Law Regarding Sentencing Aggravated Sex Trafficking

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The following are appellate cases discussing the sentencing of aggravated sex trafficking. Cases that merely mention the fact of such a sentence, without analysis, are omitted. All but one of these cases is unpublished, and therefore may not ordinarily be relied upon as legal precedent.

State v. Ivy

Multiple-Victim Aggravating Factor Cannot be Used if Not Alleged

In *State v. Ivy*, the State charged the defendant with multiple offenses including seven counts of second-degree sex trafficking or solicitation to practice prostitution involving seven different victims. None of the charges alleged the presence of a statutory aggravating factor—such as the presence of multiple victims—and none indicated that the statutory maximum sentence was 25 years, as would be the case if a statutory aggravating factor were present.¹

Following verdicts of guilty, the jury was asked to, and did, find 15 aggravating factors. The district court did not impose an aggravated departure, however. Instead, the court imposed multiple consecutive sentences, adding to each sex-trafficking related sentence the 48-month modifier applicable to the statutory aggravating factor of multiple sex trafficking victims. The total length of the sentence was 700 months.

Ivy I. In *State v. Ivy*, 902 N.W.2d 652, 666–67 (Minn. Ct. App. 2017), *review denied* (Minn. Dec 19, 2017) (“*Ivy I*”), the Minnesota Court of Appeals held that the statutory aggravating factor of multiple victims did not apply because each count alleged only one victim. Because statutory aggravating factor did not apply, the 48-month modifier did not apply. While consecutive sentencing was permissible, the duration of each consecutive sentence would be the presumptive 48 months, not 96 months (the presumptive sentence plus the 48-month modifier). Based on the aggravating factors found by the jury, an aggravated departure might have been permissible, but the district court never said it was departing from the Sentencing Guidelines. The court of appeals therefore remanded the case to the district court for resentencing.

Ivy II. At resentencing, the district court imposed a combination of upward durational departures and top-of-the-box consecutive sentences to result in a total of 581 months imprisonment. In *State v. Ivy*, No. A18-

¹ *Milsap v. State*, No. A19-0121, 2019 WL 5106981 (Minn. Ct. App. Oct. 14, 2019) (unpublished) at *3.

1338, 2019 WL 2168772 (Minn. Ct. App. May 20, 2019) (unpublished), *review denied* (Minn. Aug. 6, 2019) (“*Ivy II*”), the court of appeals disallowed the upward durational departures, citing clear supreme court precedent that the remedy for an incorrect presumptive sentence resulting in an unsupported departure is remand for resentencing within the presumptive range. The court of appeals therefore again remanded the case to the district court for resentencing within the presumptive Guidelines.

Ivy III. The district court then resentenced Ivy to 433 months imprisonment using multiple top-of-the box 57-month consecutive sentences. In *State v. Ivy*, No. A19-1980, 2020 WL 3494345 (Minn. Ct. App. June 29, 2020) (unpublished), *review denied* (Minn. Oct. 1, 2020) (“*Ivy III*”), the court of appeals affirmed this practice, although it remanded the case for resentencing one count—domestic assault by strangulation—which the district court had found arose from the same behavioral incident as one of the sex trafficking counts.

Milsap v. State

One Victim, but Multiple-Victim Aggravating Factor Properly Alleged

Milsap v. State also involved second-degree sex trafficking, with two different victims. In *Milsap*—unlike *Ivy*—the complaint clearly alleged the presence of statutory aggravating factors, with the statutory maximum penalty raised to 25 years as a result. Two charges alleged that each of the two victims suffered bodily harm, and two of the charges alleged that each offense involved more than one sex trafficking victim. Milsap agreed to plead guilty to one of those latter charges as part of a global plea agreement.

On appeal, Milsap argued that, based on *Ivy I*, he should not be subject to the 48-month modifier because the count of conviction mentioned only one victim. In *Milsap v. State*, No. A19-0121, 2019 WL 5106981 (Minn. Ct. App. Oct. 14, 2019) (unpublished), *review denied* (Minn. Dec. 17, 2019), the court of appeals rejected this argument, pointing out that the charge alleged that “the offense involved more than one victim” and that the statutory maximum penalty was accordingly increased—neither of which was true in *Ivy*.

State v. Davis

Double Use of Multiple-Victim Aggravating Factor Impermissible

In *State v. Davis*, the defendant was sentenced for two counts of second-degree sex trafficking, both aggravated. One count was aggravated because of bodily harm inflicted on the first victim; the other count, involving a second victim, was aggravated because the offense involved more than one sex trafficking victim. The district imposed a 228-month sentence on the first count and a consecutive 96-month sentence on the second count. In *State v. Davis*, No. A16-1245, 2017 WL 3013214 at *4 (Minn. Ct. App. July 17, 2017) (unpublished), *review denied* (Sep. 27, 2017), the court of appeals held:

The district court's reliance on the same factor—multiple victims—to impose a longer presumptive sentence and a consecutive sentence violates the principle that

the district court may not impose a sentence that punishes a defendant twice for the same conduct. See State v. Edwards, 774 N.W.2d 596, 601 (Minn. 2009) ('[T]he district court is not permitted to impose an upward departure if the sentence will unfairly exaggerate the criminality of the defendant's conduct, or punish a defendant twice for the same conduct.'); *see also State v. Thompson, 720 N.W.2d 820, 830 (Minn. 2006) (concluding that 'double counting' a fact as both proof of an element of theft by swindle and an aggravating factor is impermissible).*

The court of appeals remanded the case for resentencing, at which the district court again sentenced the second count consecutively, but with a duration of only 48 months—disregarding the 48-month modifier—so as not to double-count the fact of multiple victims. The court of appeals affirmed the resentencing. *State v. Davis*, No. A18-0423, 2018 WL 4057253 (Minn. Ct. App. Aug. 27, 2018) (unpublished).

State v. Diggs

Consecutive Sentencing with the Multiple-Victim Aggravator Permissible

In *State v. Diggs*, the defendant was sentenced for one count of first-degree sex trafficking and one count of second-degree sex trafficking, each count involving a different teenage victim. The jury found that two statutory aggravating factors—bodily harm and multiple victims—applied to each count. The defendant was sentenced to 178 (130 + 48) months for the aggravated first-degree count and 96 (48 + 48) months consecutively for the aggravated second-degree count, for a net sentence of 274 months. In *State v. Diggs*, No. A13-2354, 2015 WL 404453 (Minn. Ct. App. Feb. 2, 2015) (unpublished), *review denied* (Minn. Apr. 14, 2015), the court of appeals found this sentence to be a proper exercise of the district court's discretion. The court voiced no concern about the consecutive sentence being based, in part, on the fact of multiple victims, as it did in *Davis*.