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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0492**

Elizer E. Darris, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 13, 2008
Affirmed
Johnson, Judge**

Polk County District Court
File No. 60-K5-00-137

Elizer E. Darris, OID 207163, 970 Pickett Street North, Bayport, MN 55003-1490 (pro se appellant)

Lori Swanson, Attorney General, Peter R. Marker, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Gregory A. Widseth, Polk County Attorney, 816 Marin Avenue, Suite 125, Crookston, MN 56716 (for respondent)

Considered and decided by Ross, Presiding Judge; Lansing, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Elizer E. Darris is serving a 306-month sentence for second-degree intentional murder. In this postconviction action, he seeks a new trial or a reduced sentence on the

ground that the jury's verdict is unclear as to whether he was found guilty of second-degree intentional murder or second-degree unintentional murder. The district court denied Darris's postconviction petition. We conclude that the district court did not abuse its discretion in ruling that Darris's arguments were considered and resolved by the supreme court on direct appeal and that there is no lack of clarity in the jury's verdict. Therefore, we affirm.

FACTS

Darris was charged with killing Cornelius Rodgers. In a two-week trial in June 2001, four counts were submitted to a Polk County jury: (1) first-degree murder (intentional and premeditated); (2) first-degree murder (intentional while committing aggravated robbery); (3) second-degree murder (intentional); and (4) second-degree murder (unintentional while committing a felony). *See* Minn. Stat. §§ 609.185(1), 609.185(3), 609.19, subds. 1(1), 2(1) (1998). The jury returned a verdict of not guilty on count 1 and verdicts of guilty on counts 2, 3, and 4. The district court sentenced Darris to life in prison.

On direct appeal, the Minnesota Supreme Court reversed the conviction on count 2, concluding that the evidence was insufficient. *State v. Darris*, 648 N.W.2d 232, 240 (Minn. 2002). The court, however, upheld the convictions on counts 3 and 4. *Id.* at 241. The supreme court remanded to the district court for entry of conviction on count 3, the second-degree intentional murder charge, and for resentencing on that count. *Id.* On remand, the district court sentenced Darris to 306 months in prison.

In this postconviction action, Darris argued to the district court that he should not have been sentenced on count 3. He requested either a new trial or a corrected sentence based on the lesser charge in count 4. The district court denied the petition. Darris appeals.

D E C I S I O N

Appellate courts “review a postconviction court’s findings to determine whether there is sufficient evidentiary support in the record.” *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). The courts “afford great deference to a district court’s findings of fact and will not reverse the findings unless they are clearly erroneous.” *Id.* “The decisions of a postconviction court will not be disturbed unless the court abused its discretion.” *Id.*

In the memorandum attached to its order, the district court relied on the supreme court’s decision in *State v. Darris*, 648 N.W.2d 232 (Minn. 2002). After reversing the first-degree murder count due to insufficient evidence, the Minnesota Supreme Court stated:

In addition to first-degree murder during the commission of an aggravated robbery, the jury returned verdicts of guilty of second-degree intentional murder and second-degree murder during the commission of an assault. We have concluded that there was sufficient evidence to support the jury’s determination that appellant caused Rodgers’ death with intent to effect his death. Thus, the evidence supports the jury’s verdict that appellant was guilty of second-degree intentional murder in violation of Minn. Stat. § 609.19, subd. 1(1). We therefore remand for entry of conviction on second-degree intentional murder and for resentencing.

Id. at 241. The district court reasoned, “The Minnesota Supreme Court clearly and unequivocally mandated that the Petitioner was to be sentenced for his conviction of Murder in the Second Degree (intentional) and did not intend to affect the jury’s determination as such.” The district court is correct. Darris may not continue to challenge the propriety of his conviction and sentence on count 3 on the grounds alleged. *See State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976).

Despite the supreme court’s prior ruling, Darris argues that the jury did not clearly find him guilty on count 3. He relies on *State v. Cromey*, 348 N.W.2d 759 (Minn. 1984), and argues that he ought to be resentenced only on count 4. In *Cromey*, the defendant was convicted of second-degree murder, but it was unclear from the general verdict form whether the jury had found her guilty of second-degree intentional murder or second-degree unintentional murder. *Id.* at 760-61. Because the former conviction carried a higher severity level than the latter, the supreme court resolved the lack of clarity in favor of the defendant and remanded for resentencing on the lesser offense. *Id.* at 760.

Cromey does not apply to Darris’s convictions. The district court did not use a general verdict form. Rather, the district court used a verdict form with four separate questions—one for each of the four counts. We have reviewed the verdict form, and it clearly shows that the jury found Darris guilty on each type of second-degree murder in counts 3 and 4. The jury placed an “X” in the box corresponding to the word “GUILTY” with respect to both of those two counts. Thus, unlike *Cromey*, there is no lack of clarity in the jury’s verdicts.

The record supports the district court's findings and conclusions. Thus, the district court did not abuse its discretion in denying Darris's petition for postconviction relief.

Affirmed.