STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1116

Jary Glenn Goodrich, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed April 26, 2011
Affirmed
Toussaint, Judge

Lincoln County District Court
File No. 41-K3-03-192

Jary Glenn Goodrich, Stillwater, Minnesota (pro se appellant)

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

Glen A. Petersen, Lincoln County Attorney, Tyler, Minnesota (for respondent)

Considered and decided by Toussaint, Presiding Judge; Peterson, Judge; and Hudson, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Judge

In this pro se postconviction proceeding, appellant Jary Glenn Goodrich challenges his 2004 convictions of kidnapping and two counts of assault, arguing that he

is entitled to a new trial because his agreement to proceed to a trial under stipulated facts was invalid and he did not adequately waive his right to a *Blakely* jury trial. Because appellant's agreement to proceed under a stipulated-facts trial was sufficient, he was not entitled to a *Blakely* trial on two of his sentences, and his third sentence has expired, we affirm.

D E C I S I O N

An appellate court reviews a district court's decision to deny postconviction relief for an abuse of discretion. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). The scope of our review is limited to determining whether there is sufficient evidence to sustain the findings of the postconviction court. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). When considering a district court's denial of postconviction relief, we review issues of law de novo and findings of fact for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). "A postconviction petitioner bears the burden of alleging and proving by a fair preponderance of the evidence facts that would warrant a decision to reopen the case." *Longoria v. State*, 749 N.W.2d 104, 106 (Minn. App. 2008), *review denied* (Minn. Aug. 5, 2008).

I.

Appellant argues that he is entitled to a new trial because his "jury trial waiver did not conform to the requirements for a stipulated-facts trial." Before proceeding with a stipulated-facts trial, a defendant must "acknowledge and waive the rights to testify at trial, to have the prosecution witnesses testify in open court in the defendant's presence, to question those prosecution witnesses, and to require any favorable witnesses to testify

for the defense in court." Minn. R. Crim. P. 26.01, subd. 3 (2003).[1] Contrary to appellant's assertions, the record clearly indicates that appellant made a valid waiver of each of these rights. Moreover, this is a challenge to appellant's convictions themselves, which this court has already affirmed. *State v. Goodrich*, No. A04-2299, 2006 WL 9534, at *1 (Minn. App. Jan. 3, 2006), *review granted* (Minn. March 28, 2006) *and order granting review vacated* (Minn. July 19, 2006). The district court therefore did not abuse its discretion by denying appellant's motion for postconviction relief on this ground.

II.

Turning our attention to appellant's sentences, he argues that the district court violated his Sixth Amendment right to a jury trial under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004). Under *Blakely*, any fact—other than a prior conviction—that is necessary to support a sentence greater than the maximum authorized by the facts established by a guilty plea or guilty verdict must either be admitted by the defendant or proven to a jury beyond a reasonable doubt. 542 U.S. at 301, 124 S. Ct. at 2536. The statutory maximum sentence is the longest sentence that a judge may impose solely on the basis of the verdict, without any additional fact-finding or admission by a defendant. *Id.* at 303-04, 124 S. Ct. at 2537. In Minnesota, the *Blakeley* statutory maximum is the presumptive sentence for the crime in question. *State v. Shattuck*, 704 N.W.2d 131, 141 (Minn. 2005).

[1] Minn. R. Crim. P. 26.01 was amended twice in 2006 and once again in 2009. These amendments neither altered the necessary waiver nor were in effect at the time of appellant's stipulated-facts trial in August 2004. We therefore quote and cite the rule in effect at the time of appellant's trial.

The *Blakely* rule applies to stipulated-fact trials. *State v. Johnson*, 689 N.W.2d 247, 253 (Minn. App. 2004), *review denied* (Minn. Jan. 20, 2005). While a stipulation to facts offered to prove the elements of a charge waives the right to a jury trial as to those elements, it does not waive the right to a jury trial as to aggravating factors that might be used for sentencing. *Id.* at 254.

Following appellant's stipulated-facts trial, the district court sentenced appellant to 78 months on the kidnapping charge, 39 months on the second-degree-assault charge, and 122 months on the first-degree-assault charge. The district court noted that the 122-month sentence was an upward durational departure from the guidelines but was justified by the facts that there were multiple victims, the victims were particularly vulnerable, and the crimes were committed in the victim's zone of privacy. *Goodrich*, 2006 WL 9534, at *1. This court held that appellant's sentence was "constitutionally invalid" and remanded for resentencing. *Id.* at *2.

On remand, the state did not seek an upward departure but rather asked that appellant be sentenced "according to the minimum mandatory sentence of one hundred and twenty months." The district court sentenced appellant to 48 months on the kidnapping charge, 36 months on the second-degree-assault charge, and 120 months on the first-degree-assault charge, all to run concurrently. We read appellant's *Blakely* argument as a challenge to all three sentences, and we address each in turn.

Appellant was convicted of kidnapping in violation of Minn. Stat. § 609.25, subds. 1(3), 2(2) (2002). Kidnapping is a severity-level-eight offense. Minn. Sent. Guidelines V (2003) (offense severity reference table). Appellant had a criminal-history score of

zero for this offense. Under the guidelines, the presumptive sentence is 48 months. Minn. Sent. Guidelines IV (2003) (sentencing guidelines grid). Because appellant received the guidelines sentence on the kidnapping charge, he was not entitled to a *Blakely* trial as to this sentence.

Appellant was also convicted of second-degree assault, a severity-level-six offense. Minn. Sent. Guidelines V. Under the guidelines, the presumptive sentence for this offense for a defendant with a criminal-history score of zero is 21 months. Minn. Sent. Guidelines IV. But the district court sentenced appellant to an executed prison term of 36 months. *See* Minn. Stat. § 609.11, subd. 5(a) (2002) (providing a mandatory-minimum three-year sentence for a defendant who commits specified offenses—including assault—while "in possession or us[ing], whether by brandishing, displaying, threatening with, or otherwise employing, a firearm").

In *Washington v. Recuenco*, the United States Supreme Court considered the implication of *Blakely* when (1) the defendant threatened his wife with a handgun, (2) the defendant was charged with assault with a handgun, and (3) the jury convicted defendant of assault with a deadly weapon. 548 U.S. 212, 215, 126 S. Ct. 2546, 2549 (2006). The Court held that a sentence based on a mandatory enhancement because the defendant was armed with a firearm—in the absence of a special-verdict answer indicating that the assault occurred with a firearm rather than some other deadly weapon—was a Sixth Amendment violation under *Blakely*. *Id.*

In the present case, appellant was charged with second-degree assault with a deadly weapon in violation of Minn. Stat. § 609.222, subd. 1 (2002). While the

attachments to the complaint do include several references to appellant stating that he had a firearm, appellant did not specifically waive his right to have a jury determine whether he had a firearm—as opposed to some other dangerous weapon—during the commission of the crime. As such, the district court's reliance on Minn. Stat. § 609.11 to impose a 36-month sentence was a violation of appellant's Sixth Amendment rights under *Blakely*.

Our determination that appellant's sentence on the second-degree-assault charge violated his rights under *Blakely* does not end our analysis, however. Appellant was sentenced to the commissioner of corrections for a period of 36 months on February 28, 2007, and this sentence was to run concurrently with appellant's other sentences. "Once an inmate completes the terms of imprisonment and supervised release, the inmate's sentence expires." *State v. Hannam*, 792 N.W.2d 862, 864 (Minn. App. 2011). Appellant's sentence expired no later than February 28, 2010, three years after he was sentenced and two months before appellant's postconviction motion was filed in district court.[2] Because appellant's sentence on the second-degree-assault conviction expired before the initiation of appellant's postconviction proceeding, this court lacks the authority to amend or modify the sentence. *Id.* Appellant's *Blakely* argument as to this sentence is therefore moot.

First-degree assault is a severity-level-nine offense. Minn. Sent. Guidelines V. For this offense, appellant had a criminal-history score of one. Under the sentencing

[2] We recognize that in all likelihood, appellant's sentence on the second-degree assault expired well before February 2010, perhaps as early as December 2006. Because there is no dispute, however, that the second-degree-assault sentence expired before the initiation of the postconviction proceedings, we decline to calculate the exact expiration date of appellant's sentence.

guidelines grid, the presumptive sentence is 98 months. Minn. Sent. Guidelines IV.

But the sentencing guidelines grid is not the only source for calculating a presumptive sentence. Appellant was charged with and found guilty of assault in the first degree in violation of Minn. Stat. § 609.221, subd. 2 (2002). Under the statute, "[w]hoever assaults a peace officer or correctional employee by using or attempting to use deadly force against the officer or employee while the officer or employee is engaged in the performance of a duty imposed by law, policy or rule" is guilty of first-degree assault. Minn. Stat. § 609.221, subd. 2(a). "A person convicted of assaulting a peace officer or correctional employee as described in paragraph (a) shall be committed to the commissioner of corrections for not less than ten years, nor more than 20 years." *Id.*, subd. 2(b).

Because the statute incorporates a mandatory-minimum ten-year sentence, the presumptive sentence for the crime was 120 months. *See* Minn. Sent. Guidelines II.E (2003) ("The presumptive duration of the prison sentence should be the mandatory minimum sentence according to statute *or* the duration of the prison sentence provided in the appropriate cell of the Sentencing Guidelines Grid, *whichever is longer*." (Emphasis added.)). Appellant's sentence on the first-degree assault was therefore the presumptive sentence for the crime, and it does not violate his Sixth Amendment right to a jury trial under *Blakely*.

Because appellant's *Blakely* argument is unavailing, the district court did not abuse its discretion by denying appellant's motion for postconviction relief.

Affirmed.