STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0922

Matthew Lewis Runningshield, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed March 4, 2013
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-CR-96-008343

Mark D. Nyvold, Fridley, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Kirk, Presiding Judge; Ross, Judge; and Schellhas, Judge.

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

ROSS, Judge

Matthew Runningshield and two friends beat a passerby to death in 1995. Runningshield pleaded guilty to second-degree murder and was sentenced to 240 months

in prison, a 90-month upward departure from the presumptive guidelines sentence. Runningshield moved the district court to modify his allegedly erroneous sentence. The district court treated his motion as a petition for postconviction relief and held both that the petition was filed after the statutory deadline and that, alternatively, the facts support the particular-cruelty finding necessary for the upward departure. Because the district court did not err by deeming the facts sufficient to support the departure, we affirm.

FACTS

Matthew Runningshield's murder conviction stems from a beating in the early morning hours of December 27, 1995. Runningshield and two friends were attempting to break into a car when they noticed a man walking by. They decided to rob him. Runningshield walked to the man and hurled a large glass bottle at his head. The man fled. The Runningshield trio caught and beat him. One of the attackers stabbed him with a screwdriver at least eleven times. They stomped on his head until he was unconscious. Runningshield kicked him repeatedly in the head and body. He died.

Runningshield pleaded guilty to second-degree felony murder (no intent to kill), under Minnesota Statutes section 609.19, subdivision 2 (2010), in a plea agreement with the state. The agreement recognized a likely sentence of 240 months in prison, representing an upward departure of 90 months from the presumptive sentence under the Minnesota Sentencing Guidelines. The departure was based on particular cruelty and on the express agreement of the parties pursuant to *State v. Givens*, 544 N.W.2d 774, 777 (Minn. 1996). Under *Givens*, plea agreements could themselves support sentencing departures. Runningshield's plea agreement had conceded that the court could depart

upward to 240 months and acknowledged that he understood that particular cruelty was a departure ground. The district court observed the "horrendous nature of the crime" and that the victim had been so badly beaten that his head was purple and had swollen to "the size of a couple of watermelons." Runningshield admitted his guilt and stated at the hearing that he knew what he was doing during the beating and was acting impulsively. He stated that he "didn't think" before the attack. The court sentenced Runningshield according to the plea agreement.

Runningshield did not file a direct appeal after his 1996 conviction and sentence, waiting 15 years to move for a corrected sentence under Minnesota Rule of Criminal Procedure 27.03, subdivision 9. The district court denied the motion for three reasons: It concluded that Runningshield's consent to the sentence as stated in the plea agreement was sufficient to support it; that the record included sufficient facts to find particular cruelty in support of the upward departure; and that that Runningshield's motion to correct his sentence was really a petition for postconviction relief, which was time-barred under the two-year statute of limitations.

This appeal follows.

D E C I S I O N

Runningshield argues that the district court erroneously treated his Rule 27.03, subdivision 9, petition as a postconviction petition that was barred by the statutory time limit on such a petition. According to a procedural rule, a "court may at any time correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. But according to statute, a two-year statute of limitations applies to petitions for postconviction relief.

Minn. Stat. § 590.01, subd. 4 (2012). Runningshield filed his motion more than 15 years after his conviction. When reviewing the district court's denial of postconviction relief, we review issues of law, including the interpretation of a procedural rule, de novo. *Johnson v. State*, 801 N.W.2d 173, 176 (Minn. 2011).

We think our recent decision in *Vazquez v. State*, 822 N.W.2d 313 (Minn. App. 2012), may resolve the deadline challenge. In *Vazquez*, we held that a motion for correction or reduction of a sentence based on the accuracy of the criminal-history score is properly brought under rule 27.03, subdivision 9, and is not subject to the two-year statute of limitations of Minnesota Statutes section 590.01. *Id.* at 314. It may be that *Vazquez* is limited to rule 27.03, subdivision 9, sentence-correction motions based on the accuracy of the criminal-history score. Although we broadly stated in *Vazquez* that "the two-year time limit does not apply to motions properly filed under [rule 27.03]," our reasoning relied on the particularities of challenges to improperly calculated criminal-history scores. *See* 822 N.W.2d at 318–20. We need not here attempt to resolve whether *Vazquez* applies beyond the context of that case because the district court also rejected Runningshield's challenge to his sentence on the merits, and it is obvious that the decision on the merits is correct. This renders harmless any error in the treatment of the deadline.

The district court denied Runningshield's challenge on the merits because the parties had agreed to the departure in the plea agreement and because sufficient facts in the record support an upward departure based on particular cruelty. On appeal from the district court's denial of a rule 27.03 motion, we will not reevaluate a sentence if the

district court properly exercised its discretion and the sentence is authorized by law. *Anderson v. State*, 794 N.W.2d 137, 139 (Minn. App. 2011), *review denied* (Minn. Apr. 27, 2011). When a sentence does not meet the requirements of the applicable sentencing statute, it is unauthorized by law. *State v. Cook*, 617 N.W.2d 417, 419 (Minn. App. 2000), *review denied* (Minn. Nov. 21, 2000). And we review the interpretation of sentencing statutes de novo. *State v. Borrego*, 661 N.W.2d 663, 666 (Minn. App. 2003).

Runningshield expressly waived any right to the presumptive sentencing guidelines sentence as part of his plea agreement, avoiding a life sentence for first-degree murder. At the time of his sentence, Minnesota law permitted defendants to waive their right to a presumptive guidelines sentence as part of a valid plea agreement. *Given*s, 544 N.W.2d at 777. The supreme court later overturned *Givens*, holding in *State v. Misquadace* that a plea agreement alone is no longer sufficient and that substantial and compelling circumstances must independently support the departure. 644 N.W.2d 65, 71 (Minn. 2002). But the 2002 *Misquadace* opinion expressly limited its reach to then-pending and future cases. *Id*. at 72. *Misquadace* therefore does not apply to cases that became final before May 9, 2002. *State v. Kilgore*, 661 N.W.2d 654, 657 (Minn. App. 2003), *review denied* (Minn. Aug. 19, 2003). Because Runningshield's conviction became final after his period of direct appeal expired in 1997, the plea agreement alone justifies the 90-month upward departure under *Givens* if the plea was valid. Runningshield does not contest the validity of his plea and the record provides no apparent reason to doubt that it was knowing, intelligent, and voluntary. The district court

did not err by upholding Runningshield's sentence as bargained-for and consistent with his plea agreement.

This is enough to affirm the district court, but we add that the court also correctly held that the record includes sufficient facts to support a finding of particular cruelty in the commission of the offense. "Particular cruelty" is a ground to depart upwardly from a presumptive guidelines sentence. Minn. Sent. Guidelines II.D.2.b.(2). Gratuitous infliction of pain qualifies as "particular cruelty." *State v. Schantzen*, 308 N.W.2d 484, 487 (Minn. 1981). Here, three would-be thieves chased down and stabbed, stomped, and kicked to death a lone bypasser whose only offense was accidentally catching their attention. Runningshield began the attack with the first blow to the head with a bottle, and then kicked the man repeatedly in the head even after he lost consciousness while one of his accomplices stabbed him, also repeatedly. These facts remind us of *State v. Copeland*, where we affirmed an upward departure for particular cruelty after the defendant continued to strike the victim multiple times and then hit him with a metal bar after he fell to the ground. 656 N.W.2d 599, 604 (Minn. App. 2003), *review denied* (Minn. Apr. 29, 2003). The supreme court has similarly deemed it particularly cruel for an attacker to continue beating his victim after he loses consciousness. *See State v. Smith*, 541 N.W.2d 584, 590 (Minn. 1996). Applying this caselaw and common sense, Runningshield's conduct constitutes particular cruelty. As the district court put it, "[w]hile murdering someone is always cruel this was not a typical murder."

Affirmed.