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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1186
A12-1187**

State of Minnesota,
Respondent,

vs.

William Ramirez Perez,
Appellant (A12-1186),

William Esturado Ramirez Perez,
a/k/a Wilberto Moya Arce,
Appellant (A12-1187)

**Filed June 17, 2013
Reversed and remanded
Ross, Judge**

Nobles County District Court
File No. 53-CR-07-1586

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

Kathleen A. Kusz, Nobles County Attorney, Travis J. Smith, Assistant County Attorney,
Worthington, Minnesota; and

James E. O'Neill, Pipestone County Attorney, Damain D. Sandy, Assistant County
Attorney, Pipestone, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Lydia Villalva Lijó, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Ross, Judge; and Klaphake, Judge.*

UNPUBLISHED OPINION

ROSS, Judge

William Perez kidnapped his estranged wife from Pipestone County, took her to Nobles County, burned her with a cigarette, repeatedly threatened her, and raped her. He pleaded guilty in Pipestone County to first-degree assault and kidnapping after he entered a plea agreement that anticipated sentences of 86 and 110 months' imprisonment, to be served concurrently. Perez entered an *Alford* plea in Nobles County to a charge of first-degree sexual assault in a plea agreement that anticipated that he would be sentenced to a prison term at the lowest end of the presumptive-sentence range under the Minnesota Sentencing Guidelines. See *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970); *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977). The plea agreement for the Nobles County offense also indicated that the anticipated sentence would run concurrently with the incarceration period for the Pipestone County offenses. The district court found that Perez had a criminal history score of four points to be applied to the Nobles County offense, including points for the Pipestone County convictions, and it imposed a sentence of 199 months' imprisonment.

Perez appeals from his 199-month prison sentence for the Nobles County sexual assault. We review a sentence challenged on appeal to decide, among other things,

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

whether it is “inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court.” Minn. Stat. § 244.11, subd. 2(b) (2012); *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006) (“Appellate courts may vacate or modify a sentence on many grounds, including that the sentence is unreasonable or inappropriate [under section 244.11].”).

Perez argues specifically that the district court erred by counting his conviction for the Pipestone County kidnapping in its calculation of his criminal history score for his sentence for the Nobles County sexual assault. The sentencing guidelines prohibit the district court from using an earlier offense to add to a criminal history score for a later offense when the offenses comprise a “single course of conduct.” Minn. Sent. Guidelines II.B.1.c. (2007). The state concedes that the district court improperly calculated the criminal history score because it lacks evidence to prove that Perez’s offenses did not occur during a single course of conduct.

This court should correct any sentence not authorized by law. Minn. R. Crim. P. 27.03, subd. 9. Perez asks that we reduce his sentence to 144 months, reflecting his proper criminal history score and his plea agreement. The state agrees with Perez’s calculation. We therefore reverse the challenged sentence. We remand the case to the district court to issue a new sentencing order with a corrected criminal history score and corrected incarceration period.

Reversed and remanded.