STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0424

Vernell Lamont Flowers, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed November 22, 2021
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27-CR-18-15406

Cathryn Middlebrook, Chief Appellate Public Defender, Amy Lawler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jacqueline Bailey, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Connolly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

On appeal from the postconviction court's denial of his petition for postconviction relief, appellant Vernell Lamont Flowers argues that the postconviction court erred by determining that (1) it lacked authority to review administrative decisions implementing a

sentencing order and (2) appellant's pattern-of-stalking conviction arose out of the same set of circumstances as the dismissed charge of first-degree criminal sexual conduct, requiring appellant to register as a predatory offender. We affirm.

FACTS

Appellant has a history of domestic violence against A.H., his former girlfriend and mother to his two children. In June 2018, respondent State of Minnesota charged appellant with eight felony counts, the relevant counts being count 1: First Degree Criminal Sexual Conduct under Minn. Stat. § 609.342, subd. 1(e)(ii) (2018), and count 5: Pattern of Stalking Conduct under Minn. Stat. § 609.749, subd. 5(a) (2018).

Count 1 alleged that on April 27, 2018, appellant injured A.H. using force or coercion to sexually penetrate her. Criminal sexual conduct in the first degree is an enumerated offense under Minn. Stat. § 243.166, subd. 1b(a)(1)(iii) (2018), requiring any person convicted of the offense, or of another offense arising out of the same set of circumstances, to register as a predatory offender. Count 5 alleged that between March 25, 2018, and April 27, 2018, appellant engaged in a pattern of stalking conduct with A.H., and she felt terrorized or feared bodily harm.

On February 19, 2019, appellant pleaded guilty to count 5 and fifth-degree assault. Shortly thereafter, the district court sentenced appellant to 51 months in prison on the pattern-of-stalking conviction and a concurrent 24 months on the assault conviction. The district court did not tell appellant that he must register as a predatory offender. Registration was never discussed.

Sometime after sentencing, while in custody of the Commissioner of Corrections (the commissioner), the Bureau of Criminal Apprehension (BCA) and the Department of Corrections (DOC) notified appellant that he had to register as a predatory offender due to his criminal-sexual-conduct charge. Appellant then filed a petition for postconviction relief on the grounds that he was not required to register because the criminal-sexual-conduct charge did not arise out of the same set of circumstances as the stalking or assault convictions. In addition, appellant argued that probable cause did not support the criminal-sexual-conduct charge.

The postconviction court denied appellant's petition, finding sua sponte that (1) it lacked authority to review the BCA's and DOC's administrative decisions on a motion to correct a sentence; (2) appellant failed to establish a factual basis warranting postconviction relief under Minnesota Statutes Chapter 590 and Minnesota Rule of Criminal Procedure 27.03; and (3) appellant is not entitled to postconviction relief on the merits. This appeal follows.

DECISION

Appellant argues that, under Minn. R. Crim. P. 27.03 subd. 9, the postconviction court had authority to review the BCA's and DOC's administrative decisions requiring him to register as a predatory offender. We disagree.

We review a postconviction court's denial of a postconviction petition for an abuse of discretion. *See Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). The postconviction court abuses its discretion when it "exercise[s] its discretion in an arbitrary or capricious manner, base[s] its ruling on an erroneous view of the law, or [makes] clearly

erroneous factual findings." *Id.* (quotation omitted). We review the postconviction court's factual findings for clear error and its legal conclusions de novo. *See Swaney v. State*, 882 N.W.2d 207, 214 (Minn. 2016).

Appellant argues that two Minnesota Supreme Court decisions, *State v. Berry*, 959 N.W.2d 184, 191 (Minn. 2021) (remanding to district court to vacate court-imposed registration requirement) and *State v. Lopez*, 778 N.W.2d 700, 707 (Minn. 2010) (holding district court erred by finding defendants were subject to predatory-offender registration) demonstrate that imposing registration requirements is necessarily a judicial function. Appellant conflates a district court's authority under Minn. Stat. § 243.166, subd. 1b(a)(1), for *sentencing* purposes and a postconviction court's scope of authority under a Minn. R. Crim. P. 27.03, subd. 9, *motion to correct a sentence*.

Implicit in cases like *Berry* and *Lopez* is the judiciary's authority to review registration requirements. However, that authority is not at issue here. Rather, the question here is whether the postconviction court has authority, under rule 27.03, to review the BCA's and DOC's administrative decision.

Rule 27.03, subd. 9, grants postconviction courts authority to correct a sentence. *State v. Schnagl*, 859 N.W.2d 297, 301 (Minn. 2015). However, rule 27.03, subd. 9, is only properly invoked when the *original* sentence is being challenged. *Id.*; *State v. Coles*, 862 N.W.2d 477, 780 (Minn. 2015) (stating that "the plain language of Rule 27.03 is limited to sentences, and the court's authority under the rule is restricted to modifying a sentence"); *Reynolds v. State*, 888 N.W.2d 125, 132-33 (Minn. 2016) (noting "Rule 27.03, subdivision 9, does not create a new cause of action or deny a defendant a defense on the merits," the

rule is merely procedural and is meant to "facilitate[] the performance of a judicial function: sentencing"). A postconviction court's authority under rule 27.03 is "separate and distinct" from judicial authority to review separate administrative decisions. *Schnagl*, 859 N.W.2d at 302. A motion under rule 27.03 is therefore "not the proper procedure to obtain judicial review of the Commissioner's administrative decision implementing the sentence imposed by the district court." *Id.* at 303.

In addition, appellant challenges the BCA's and DOC's administrative decision to require him to register as a predatory offender but failed to name the commissioner as a party. Under rule 27.03 subd. 9, the commissioner cannot intervene as a party.[1] *Id.* at 302. The commissioner cannot offer evidence or testimony in an evidentiary hearing, limiting the record. *Id.* at 303. In short, a rule 27.03 motion is not the proper procedure because it does not address the interests of *both* parties. *Id.* Following *Schnagl*, we agree with the district court's determination that it did not have the authority to review appellant's motion for postconviction relief. *Id.* Because we conclude that the postconviction court lacked authority under rule 27.03 to review the BCA's and DOC's administrative decisions requiring him to register as a predatory offender, we do not consider appellant's substantive registration arguments.

Affirmed.

[1] A decision on the merits without the commissioner as a party may be a non-binding advisory opinion. *Schnagl*, 859 N.W.2d at 303 (stating "a district court's order directing the Commissioner to correct the expiration date of a conditional-release term could very well be a non-binding advisory opinion").