STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0242

State of Minnesota,
Respondent,

vs.

Courtney Deshaun Hall,
Appellant.

Filed July 22, 2024
Affirmed
Ede, Judge

Dakota County District Court
File No. 19HA-CR-21-237

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

Kathryn M. Keena, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

Considered and decided by Wheelock, Presiding Judge; Cochran, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this reinstated appeal, appellant seeks reversal of his third- and fourth-degree criminal-sexual-conduct convictions, asserting that the prosecutor committed prejudicial misconduct in her rebuttal closing argument by implying that the victim had contracted a

sexually transmitted disease (STD) from appellant. Alternatively, appellant challenges his sentence, maintaining that his criminal-history score improperly included a gross-misdemeanor/misdemeanor point. We affirm.

FACTS

Respondent State of Minnesota charged appellant Courtney Deshaun Hall by amended complaint with one count of third-degree criminal sexual conduct, in violation of Minnesota Statutes section 609.344, subdivision 1(b) (2018), and one count of fourth-degree criminal sexual conduct, in violation of Minnesota Statutes section 609.345, subdivision 1(b) (Supp. 2019). The matter proceeded to a jury trial. The following factual summary is derived from the trial record and relevant procedural history.

Underlying Conduct

During the summer of 2020, the victim (A.V.) met Hall and asked him for his social media username. At the time, A.V. was 13 years old, which she told Hall. The two began communicating via social media shortly after they exchanged username information.

About a week or two later, A.V. and Hall arranged a meeting. A.V. had originally planned to spend time with her boyfriend, but her boyfriend did not show up. A.V. contacted Hall via social media, and the two agreed that A.V. would come over to Hall's residence. After she arrived, A.V. and Hall were in the basement of his home when Hall placed A.V. on his lap. After some time, A.V. got up, moved, and laid down on a couch. Hall then "pulled [A.V.'s] clothes to the side" and began looking at and touching A.V.'s "upper vagina." Later that evening, A.V. went home.

On another occasion, A.V. again visited Hall at his home. This time, Hall told A.V. that she could not enter his residence. Instead, A.V. and Hall sat in Hall's car. After about five or ten minutes, Hall "begged [A.V.] to have sex with him" and they eventually did so, in his car. Sometime after this occurred, A.V. noticed that her "vagina was not the same." She went to the doctor and tested positive for an STD. A.V. told the doctor that she could have contracted the STD from a boy her age. After the diagnosis, A.V. told her parents what had happened. She also tried to tell Hall about the STD via social media. A.V. informed Hall that something was wrong and that she had only "done anything with him." Hall responded that he had not "done anything with anyone in a long time." A.V. reported the incidents to law enforcement.

Pretrial and Trial Proceedings

Prior to trial, Hall's counsel filed a motion requesting that, if the state introduced STD evidence, the district court permit the defense to cross-examine A.V. and present evidence relating to her prior sexual conduct. During a motion hearing, defense counsel further explained that they were asking the district court to allow cross-examination of A.V. and her mother about a prior sexual incident in response to any evidence the state elicited about A.V.'s STD. The district court responded by acknowledging that it would consider the issue but asked the parties to come to an agreement. The parties ultimately agreed to limit the number of questions that could be asked regarding the STD.

At trial, A.V. testified that she participated in a follow-up interview with Detective L.F. During that interview, Detective L.F. asked A.V. to communicate with Hall on social media. The detective took pictures of the social media messages. The state offered the

exhibits into evidence and the district court received them. In relevant part, A.V. and Hall exchanged the following messages:

> A.V.: Ok… why didn't you tell me that you had an std I'm really upset[.]
>
> HALL: I didn't have an std dude that's the thing if I had an std I'd have never even fooled around with you in single and you're the only person I've done anything with since July 2019[.] I do not be having sex like that[.]
>
> A.V.: I haven't been with anyone else. I can't believe that I got an std at 13.
>
> HALL: And I couldn't have possibly given it to you because I don't have it so whoever else you fool around with check them[.]

A.V. also testified that she did not know what to do after what happened in the car because she "obviously knew it wasn't right." She hesitated to tell her parents because Hall had children. For similar reasons, A.V. did not want to participate in the controlled social media conversation arranged by Detective L.F. A.V. "didn't want [Hall] to get in trouble at first." When asked why, A.V. responded that she "felt guilty because on [social media] he would send [her] pictures of his children. And he told [her] a lot about his past and how he was homeless."

Detective L.F. testified that she spoke with Hall after her interview with A.V. During that conversation, Hall stated that he had met A.V. several weeks prior, when one of Hall's friends was flirting with A.V. Hall admitted that, at the time, A.V. informed Hall and his friend of her age. Hall also told Detective L.F. that, on another day, he connected with A.V. on social media at A.V.'s request. And Hall said that A.V. would show up at

Hall's home in the evening, knock on his door, and tell him that she snuck out to meet her boyfriend and that her boyfriend did not show up.

During his closing argument, Hall's trial counsel asserted that A.V. had testified that, "when she initially found out she had an STD, she attributed that to someone else." Trial counsel further maintained that A.V. had "pointed the finger at two different people." In her rebuttal, the prosecutor responded that A.V. "wasn't pointing the finger" but rather "was trying to explain to her parents that perhaps someone age appropriate had given her an STD to protect the defendant, because she knew it was wrong." Hall's trial counsel did not object to the prosecutor's argument.

The jury found Hall guilty of both counts and the district court ordered a presentence investigation report (PSI). The sentencing worksheet of the PSI notes that Hall's criminal history includes two gross-misdemeanor convictions and two misdemeanor convictions. Each of those convictions was allotted one unit, resulting in four units that amounted to one criminal-history point.

Based on a criminal-history score of one, the district court sentenced Hall to 27 months on the fourth-degree criminal-sexual-conduct charge. The district court explained that the sentence it imposed for the fourth-degree criminal-sexual-conduct count was an upward dispositional departure from the Minnesota Sentencing Guidelines. The district court found that Hall was unamenable to probation and stated that ground as its reason for the departure. As to the third-degree criminal-sexual-conduct charge, the district court

Hernandized[1] Hall's criminal-history score—resulting in a score of two—and sentenced him to 60 months.

Hall filed a notice of appeal in February 2023 but later moved for a stay to pursue postconviction relief in the district court. In May 2023, we granted Hall's stay motion.

Postconviction Proceedings

Hall petitioned for postconviction relief in June 2023. He contended that the sentencing worksheet of the PSI included a conviction for a misdemeanor fifth-degree assault but the register of actions in the Minnesota Court Information System listed that conviction as a "petty misdemeanor pursuant to Minn. R. Crim. P. 23.02." Hall also pointed out that, although the original warrant of commitment for the disputed conviction showed a misdemeanor sentence with a stay of imposition, an amended sentencing order filed in June 2021 reflected that the offense was sentenced as a petty misdemeanor.

Hall sought resentencing in this case, arguing that his criminal-history score "improperly included a gross misdemeanor/misdemeanor point when one of his purported qualifying convictions [had] a petty misdemeanor level sentence[.]" Hall asserted that, because petty misdemeanors are not used to compute criminal-history scores and the three other misdemeanor/gross-misdemeanor convictions do not amount to "a gross misdemeanor/misdemeanor point in his criminal-history score[,]" his criminal-history score at the time of his sentencing in this case was zero. With that score, Hall maintained

[1] Generally, under *State v. Hernandez*, a district court sentencing a defendant on the same day for multiple convictions can increase the defendant's criminal-history score incrementally as the district court imposes each successive sentence. 311 N.W.2d 478, 481 (Minn. 1981).

that his presumptive guidelines sentence for the fourth-degree criminal-sexual-conduct charge was 18 months, stayed. Hall also claimed that his presumptive guidelines sentence for the third-degree criminal-sexual-conduct charge—after *Hernandizing* his criminal-history score—was 48 months in prison. Lastly, Hall contended that the district court violated his constitutional right to a jury trial by imposing an upward dispositional departure based on factual findings by the district court judge.

In July 2023, the district court filed an amended sentencing order as to the disputed fifth-degree assault conviction, specifying that Hall had, in fact, received a misdemeanor sentence in that case.

In September 2023, the postconviction court filed an order granting in part and denying in part Hall's petition for postconviction relief. The postconviction court found that, in the fifth-degree assault case, Hall "was sentenced and originally received a stay of imposition on a misdemeanor level sentence," but he later requested a hearing because he wanted to execute that sentence. The postconviction court determined that an amended sentencing order filed in June 2021 showed that the district court had granted Hall's motion to execute but erroneously stated the sentence level was a petty misdemeanor.

Nevertheless, the postconviction court noted that the July 2023 amended sentencing order in the fifth-degree assault case reflected that Hall was sentenced to 50 days in jail and discharged from probation, which "correct[ed] the clerical error to indicate that the conviction [was] a [m]isdemeanor." The postconviction court referenced the transcript from the proceeding wherein Hall asked for execution of the fifth-degree assault sentence, in which the presiding judge said: "I'm gonna give you credit for the 50 days you've served.

I'll discharge you from probation." The postconviction court reasoned that, because Hall was subject to jail time, the fifth-degree assault conviction was a misdemeanor, not a petty misdemeanor. And the postconviction court determined that the June 2021 amended sentencing order describing the fifth-degree assault conviction as a petty misdemeanor did not "negate the proper criminal-history score."

On those grounds, the postconviction court denied Hall's motion for resentencing based on an incorrect criminal-history score. But the postconviction court granted Hall's motion to be resentenced on the fourth-degree criminal-sexual-conduct charge because, without factual findings by a jury, the district court was prohibited from imposing an upward dispositional departure.

The postconviction court filed an amended order sentencing Hall to 97 days on the fourth-degree criminal-sexual conduct count and 60 months on the third-degree criminal-sexual-conduct count.

This reinstated appeal follows.

DECISION

Hall advances two claims on appeal. He contends first that the prosecutor committed prejudicial misconduct in the state's rebuttal closing argument, asserting that it was plain error for the prosecutor to discuss "A.V.'s motivations when there was no testimony that Hall had [an STD] or that he was the source of A.V.'s diagnosed STD." Hall maintains second that, because the June 2021 amended sentencing order described the fifth-degree assault conviction as a petty misdemeanor and that order was in place at the time of

sentencing in this case, his criminal-history score was incorrect and the postconviction court erred in denying his petition. Neither argument persuades us to reverse.

I. The prosecutor's rebuttal closing argument did not affect Hall's substantial rights.

Because Hall did not object to the state's closing argument, we "review the prosecutor's statements under a modified plain error analysis." *State v. Davis*, 982 N.W.2d 716, 726 (Minn. 2022) (citing *State v. Ramey*, 721 N.W.2d 294, 299–300, 302 (Minn. 2006)). Once a defendant establishes plain error, the burden shifts to the state to show that "the plain error *did not* affect the defendant's substantial rights." *State v. Epps*, 964 N.W.2d 419, 423 (Minn. 2021). "Prosecutorial misconduct affects substantial rights if there is a reasonable likelihood that the absence of misconduct would have had a significant effect on the jury's verdict." *State v. Davis*, 735 N.W.2d 674, 681–82 (Minn. 2007). To determine "whether there is a reasonable likelihood that the absence of the misconduct would have had a significant effect on the jury's verdict," appellate courts "consider the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions." *Id.* at 682. "If the state fails to demonstrate that substantial rights were not affected, the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings." *Id.* (quotation omitted).

Hall asserts that the prosecutor committed prejudicial misconduct by arguing facts that were not in evidence. Assuming without deciding that the prosecutor's argument about the STD issue amounted to plain error, we analyze whether there is a reasonable probability

that the absence of such error would have had a significant effect on the verdict.[2] *See Davis*, 735 N.W.2d at 681–82. As explained below, after considering the strength of the evidence against Hall, the pervasiveness of the prosecutor's statements, and whether Hall had an opportunity to rebut the improper suggestions, we conclude that there is not a reasonable likelihood that the absence of the alleged misconduct would have significantly affected the verdict.

The evidence against Hall was strong. Hall and A.V. recounted very similar stories as to how they met and shared similar details about their other encounters, including stories about how A.V. went to see Hall after her boyfriend did not show up. Moreover, although Hall denied that he had an STD in social media messages, he conceded that he "fooled around" with A.V. and stated that A.V. was "the only person [he had] done anything with since July 2019."

The prosecutor's statements were not pervasive. While the prosecutor's combined closing argument was about ten transcribed pages, the prosecutor's challenged assertion was confined to two sentences in the middle of her rebuttal closing argument. The district court also instructed the jury that the attorneys' arguments were not evidence, and we

[2] Hall also contends that the prosecutor committed prejudicial misconduct by circumventing the parties' agreement to limit the number of questions that could be asked regarding the STD. Because we assume plain error, we decline to address this argument.

assume that the jury followed the district court's instructions. *See State v. Vang*, 774 N.W.2d 566, 578 (Minn. 2009).

Although defense counsel did not have the opportunity to counter the prosecutor's rebuttal closing argument, the prosecutor's contentions about the STD issue did not affect Hall's substantial rights because of the strength of the evidence against him, the brevity of the prosecutor's statements, and the district court's jury instructions. We therefore conclude that Hall is not entitled to reversal based on the prosecutor's rebuttal closing argument.

II. The district court did not abuse its discretion by denying Hall's petition for postconviction relief.

Hall argues that the June 2021 amended sentencing order in the fifth-degree assault case, which denotes the sentencing level as a petty misdemeanor, controls over the original sentencing order and the July 2023 amendment, which corrects the June 2021 order. Because the June 2021 sentencing order was in place at the time of sentencing in this case and specified that the fifth-degree assault conviction was a petty misdemeanor, and because petty misdemeanors are not counted as units when calculating a criminal-history score, Hall maintains that the criminal-history score set forth in the PSI was incorrect. Hall therefore contends that the postconviction court erred in denying his petition. We disagree.

This court reviews "the denial of a petition for postconviction relief for an abuse of discretion." *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). "A postconviction court abuses its discretion when it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual

findings." *Id.* (quotation omitted). "Legal issues are reviewed de novo, but [this court's] review of factual issues is limited to whether there is sufficient evidence in the record to sustain the postconviction court's findings." *Id.* (quotation omitted). In other words, appellate courts "do not reverse the postconviction court's findings unless they are clearly erroneous." *Id.* "Findings of fact are clearly erroneous if, on the entire evidence, we are left with the definite and firm conviction that a mistake occurred." *State v. Andersen*, 784 N.W.2d 320, 334 (Minn. 2010).

The Minnesota Sentencing Guidelines explain that "[p]rior gross misdemeanor and misdemeanor convictions count as units comprising criminal history points." Minn. Sent'g Guidelines 2.B.3 (Supp. 2019). "Four units equal one criminal history point[.]" *Id.* A defendant should be assigned a unit for each conviction if the defendant received the sentence before the current sentencing. Minn. Sent'g Guidelines 2.B.3.a. "Convictions that are petty misdemeanors by statutory definition, that have been certified as petty misdemeanors under Minn. R. Crim. P. 23.04, or that are deemed to be petty misdemeanors under Minn. R. Crim. P. 23.02 are not used to compute the criminal history score." Minn. Sent'g Guidelines cmt. 2.B.307 (Supp. 2019).

In support of his argument that the June 2021 amended sentencing order in the fifth-degree assault case controls, Hall cites our decision in *State v. Stewart*, 923 N.W.2d 668 (Minn. App. 2019), *rev. denied* (Minn. Apr. 16, 2019). But Hall's reliance on *Stewart* is unavailing. In *Stewart*, the district court sentenced the appellant to 132 months based on a criminal-history score of two, with one of those points arising from a felony theft conviction. 923 N.W.2d at 673. The district court later amended the felony theft sentence

and executed a 342-day sentence. *Id.* at 678. On appeal, we concluded that, "[b]ecause this sentence [was] within gross misdemeanor sentencing limits, *see* Minn. Stat. § 609.02, subd. 4 (2018), [appellant's] prior conviction [was] deemed a gross misdemeanor under Minn. Stat. § 609.13, subd. 1(1) (2018)." *Id.* "[B]ecause [appellant's] sentence [was] based on a criminal-history score that incorrectly include[d] a felony point for a conviction that received a non-felony sentence, we reverse[d] his sentence and remand[ed] for resentencing." *Id.* at 680.

Unlike the appellant in *Stewart*, however, Hall's sentence was never amended from one sentence level to another. As evidenced by the district court's oral pronouncement of the fifth-degree assault sentence, the district court did not initially impose a misdemeanor sentence under Minnesota Statutes section 609.13, subdivision 3 (2018), and then later resentence Hall by imposing a sentence within petty misdemeanor limits under Minnesota Rule of Criminal Procedure 23.02. We therefore conclude that *Stewart* is inapposite to the facts before us.

Instead, our binding precedent establishes that, when there is a discrepancy between a district court's written and oral sentences, the oral pronouncement is controlling. In *State v. Staloch*, we concluded that "the terms of [the] appellant's oral sentence [took] precedence over contrary terms in his written sentence[.]" 643 N.W.2d 329, 330 (Minn. App. 2002). In its order denying Hall's petition, the postconviction court explained that, after Hall requested that his fifth-degree assault sentence be executed, the district court held a hearing, during which the presiding judge imposed the sentence by stating that Hall would receive "credit for the 50 days [he had] served" and by discharging Hall from

probation. In other words, the district court's orally pronounced sentence for the fifth-degree assault was 50 days in jail, with credit for 50 days. Under *Staloch*, the oral pronouncement of Hall's sentence controls over the June 2021 amended sentencing order describing the sentence as a petty misdemeanor. *See id.* Because petty misdemeanors do not carry jail time as punishment and misdemeanors are "crime[s] for which a sentence of not more than 90 days . . . may be imposed," Hall's fifth-degree assault conviction was not a petty misdemeanor; it was a misdemeanor. *See* Minn. Stat. § 609.02, subds. 3, 4a (2018).

Moreover, Hall does not challenge the postconviction court's factual findings, which include a determination that "[i]t was clear from the transcript of the hearing [in the fifth-degree assault case] that the [district court] did not intend for the matter to be a petty misdemeanor, but a misdemeanor because there was a jail sentence imposed[,]" which "was stated on the record" and "was unambiguous." Based on the entire evidence, we are not left with the definite and firm conviction that the postconviction court clearly erred in so finding. *See Andersen*, 784 N.W.2d at 334.

Citing *State v. Rock*, 380 N.W.2d 211 (Minn. App. 1986), *rev. denied* (Minn. Mar. 27, 1986), Hall argues that the state could have "objected through the appropriate process to the second amended sentencing order [in the fifth-degree assault case] . . . after it was signed by the district court judge." In *Rock*, the appellant waived a PSI and was sentenced pursuant to a criminal-history score of zero—even though the appellant's actual criminal-history score was three—because "the prosecutor and the court assumed [appellant's] prior offenses had decayed." 380 N.W.2d at 212. The prosecutor discovered the error over three months later and moved the district court to correct the sentence. *Id.*

The district court amended the sentence based on a criminal-history score of three. *Id.* On appeal, we concluded that, "[w]hen appellant waived a [PSI] and an error in his criminal history score was discovered several months later by the State, and the State did not timely perfect a sentencing appeal, the [district] court erred in imposing a more severe sentence upon resentencing." *Id.* at 214. In so holding, we reasoned that, "[b]ecause the sentence . . . was authorized by law, the [district] court lacked authority under the rules [of criminal procedure] to correct the sentence." *Id.* at 213–14.

In contrast to *Rock*, Hall's criminal-history score was correctly stated in the PSI. And the July 2023 amended sentencing order in the fifth-degree assault case did not resentence Hall. Instead, that order only corrected the clerical discrepancy between the district court's prior written and oral sentencing pronouncements, which is expressly authorized by the Minnesota Rules of Criminal Procedure. *See* Minn. R. Crim. P. 27.03, subd. 10 ("Clerical mistakes in a judgment, order, or in the record arising from oversight or omission may be corrected by the court at any time, or after notice if ordered by the court."). We therefore conclude that *Rock* is distinguishable.

In sum, the district court's oral pronouncement of Hall's fifth-degree assault sentence took precedence over contrary terms in his written sentence. *See Staloch*, 643 N.W.2d at 330. After carefully reviewing the evidence, we discern no clear error in the postconviction court's factual findings. *See Pearson*, 891 N.W.2d at 596. We therefore conclude that the postconviction court did not abuse its discretion by denying Hall's petition.

Affirmed.