

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0301**

State of Minnesota,
Respondent,

vs.

Marc Phillip Radel,
Appellant.

**Filed April 21, 2025
Affirmed
Slieter, Judge**

Ramsey County District Court
File No. 62-CR-23-273

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

John J. Choi, Ramsey County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Slieter, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this direct appeal from the judgment of conviction for threats of violence, and following a stay and remand to permit appellant to seek postconviction relief from the district court, appellant argues that the district court erred in calculating his criminal-history

score by including one-half point for an offense committed as part of the single course of conduct as another offense included in his score. Because appellant's criminal-history score was properly calculated, the district court acted within its discretion by denying his postconviction petition, and we affirm.¹

FACTS

Appellant Marc Phillip Radel was convicted of threats of violence. Minn. Stat. § 609.713 (2022). At sentencing, the district court imposed a presumptive sentence of 24 months' imprisonment based upon a criminal-history score of four, which was consistent with the sentencing worksheet attached to the presentence investigation report. The criminal-history score included, as relevant to this appeal, two-and-one-half points for three 2013 convictions—two attempted robberies and one fifth-degree possession of a controlled substance.

Radel appealed his sentence, and this court stayed his direct appeal to allow him to file a postconviction petition in district court contesting the accuracy of his criminal-history score. Radel argued that the district court erred by assigning him one-half point for the November 2013 fifth-degree possession-of-a-controlled-substance conviction because respondent State of Minnesota failed to prove that it was not part of the same course of conduct as the two attempted-robbery convictions that were sentenced on the same day.

¹ Although Radel's brief also argued that he should be allowed to withdraw his guilty plea as unintelligently entered, Radel withdrew this issue prior to the appeal coming under consideration by this court.

The district court denied Radel’s postconviction petition, determining that the controlled-substance offense was not committed as part of a single course of conduct as the two attempted robberies and, therefore, the one-half criminal-history point was properly included in his criminal-history score.²

Radel appeals.

DECISION

We review a district court’s postconviction denial of a motion to correct a sentence for an abuse of discretion. *State v. Williams*, 862 N.W.2d 701, 703 (Minn. 2015). This discretion is abused “when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Id.* Whether a defendant’s criminal-history score was properly calculated is a question of law that we review *de novo*. *State v. Bell*, 971 N.W.2d 92, 107 (Minn. App. 2022) (citing *State v. Scovel*, 916 N.W.2d 550, 554 (Minn. 2018)). To determine whether Radel’s criminal-history score is accurate, we must first determine whether the sentence for the fifth-degree possession of a controlled substance was proper. *See* Minn. Stat. § 609.035, subd. 1 (2022) (“if a person’s conduct constitutes more than one offense under the laws of this state, the person may be punished for only one offense”); *see also State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014) (“deciding whether the district court’s imposition of two sentences was barred by section 609.035, subdivision 1, requires us to determine first whether the conduct underlying the offenses involved a single course of conduct”). Radel does not contest the district court’s factual

² In this case the state did not file a brief on appeal and accordingly, we consider the case on its merits. Minn. R. Civ. App. P. 142.03.

findings. He instead argues it erred in its legal conclusion. Hence, our review is *de novo*. *State v. Barthman*, 938 N.W.2d 257, 265 (Minn. 2020).

Whether multiple offenses arose out of a single course of conduct is a mixed question of fact and law. *Jones*, 848 N.W.2d. at 533. To determine whether multiple offenses constitute a single course of conduct “Minnesota courts consider whether the conduct (1) shares a unity of time and place and (2) was motivated by an effort to obtain a single criminal objective.” *State v. Bauer*, 776 N.W.2d 462, 478 (Minn. App. 2009), *aff’d*, 792 N.W.2d 825 (Minn. 2011). To determine a single criminal objective, the court examines “the relationship of the offenses to one another,” and whether the acts were “necessary to or incidental to the commission of a single crime and motivated by an intent to commit that crime.” *State v. Bakken*, 883 N.W.2d 264, 270-71 (Minn. 2016) (quotations and citations omitted).

The state bears the burden of proving that multiple offenses were not committed as part of a single course of conduct. *Id.* at 270. “When a defendant’s sentence is based on an incorrect criminal-history score, his case must be remanded for resentencing.” *State v. Woods*, 945 N.W.2d 414, 416-17 (Minn. App. 2020).

Radel claims that his 2013 convictions for attempted robberies and controlled-substance possession were part of a single course of conduct such that the one-half point for the controlled-substance possession ought not be added to his criminal-history score. However, Radel points to no evidence in the record that indicates that he possessed the same criminal objective when he committed these crimes, and our review of the record finds no such evidence.

The district court found that, in June 2013, Radel committed two attempted robberies. Each robbery involved a separate victim, one who was traveling in her vehicle when Radel attempted to enter it, and another who was sitting in her parked vehicle when Radel attempted to enter it. Radel possessed methamphetamine during the robbery attempts. There is nothing in the record that suggests Radel was motivated to attempt the robberies to obtain the methamphetamine in his possession. Rather, each robbery included a separate victim and motive unrelated to Radel's controlled-substance possession resulting in "a divisible series of incidents rather than a single behavioral incident." *State v. Krampotich*, 163 N.W.2d 772, 776 (concluding that the unauthorized use of a motor vehicle, simple robbery, simple assault as to one defendant, and aggravated assault as to the other defendant were not a single behavioral incident and therefore was not the same course of conduct).³

We agree with the district court's determination that, from these facts, the state has proved that Radel's possession of the controlled substance was not part of the same course of conduct as the attempted robberies. Robbery requires the use or threat of force to take personal property. Minn. Stat § 609.24 (2012). Conversely, possessing a controlled substance requires only that a person possess the controlled substance. Minn. Stat.

³ Previously courts have used the phrases "single course of conduct" and "single behavioral incident" interchangeably. *See, e.g., State v. Eaton*, 292 N.W.2d 260, 267 (Minn. 1980) (citation omitted). Our use of the phrase "single course of conduct" in this opinion has the same meaning as the phrase "single behavioral incident." *See Jones*, 848 N.W.2d at 531 n.1.

§ 152.025, subd. 2(1) (2012). Possession need not be, and by these facts is not, related to an attempted robbery.

In sum, though the criminal acts were linked in time and place, they were not linked by criminal objective. Because Radel's conviction for possession of a controlled substance was not part of the same course of conduct as the two attempted-robbery convictions, the district court acted within its discretion by denying Radel's postconviction petition because his criminal-history score was correctly calculated.

Affirmed.