

SUPREME COURT OF MINNESOTA

Bilbro v. State

920 N.W.2d 836 (Minn. 2018) · Decided December 11, 2018

SUMMARY

The Minnesota Supreme Court reversed the court of appeals and held that Bilbro's consecutive sentences for attempted second-degree intentional murder and second-degree criminal sexual conduct were not authorized by law. The court remanded for imposition of concurrent sentences and granted Bilbro's motion to strike the portion of the State's brief addressing treatment of his sentencing motion as a postconviction petition.

CASE DETAILS

COURT	Supreme Court of Minnesota
WRITING FOR THE COURT	Per curiam
JURISDICTION	Minnesota
DECIDED	December 11, 2018
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Minnesota Supreme Court granted review of a court of appeals decision concerning the treatment of Bilbro's sentence-correction motion and the legality of consecutive sentences.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Minnesota
PARTIES	Melvin Bilbro v. State

TOPICS

- sentencing
- criminal procedure
- post-conviction relief
- appellate procedure

PRACTICE AREAS

- Criminal procedure
- Sentencing
- Appellate procedure
- Post-conviction relief

QUESTIONS PRESENTED

1. Whether the district court lawfully imposed consecutive sentences for Bilbro's two offenses under the Minnesota Sentencing Guidelines.

2. Whether the State waived its argument that Bilbro's Rule 27.03 motion was properly treated as a postconviction petition.

HOLDINGS

1. The consecutive sentences were not authorized by law, and Bilbro must receive concurrent sentences.
2. The State's response brief was stricken to the extent it argued that the district court correctly treated Bilbro's motion as a postconviction petition.

FACTUAL BACKGROUND

Bilbro pleaded guilty to attempted second-degree intentional murder and second-degree criminal sexual conduct pursuant to an agreement under which the State dismissed two counts and waived its opportunity to seek an enhanced sentence. At sentencing, the State sought consecutive sentences, while Bilbro requested concurrent sentences. The district court imposed presumptive guidelines sentences of 163 months and 36 months consecutively, along with a 10-year conditional-release term.

PROCEDURAL HISTORY

Bilbro pleaded guilty in 2008 to attempted second-degree intentional murder and second-degree criminal sexual conduct. The district court imposed presumptive guidelines sentences consecutively and later denied Bilbro's Rule 27.03 motion as an untimely postconviction petition. The court of appeals held that the motion should not have been treated as a postconviction petition, found the conditional-release term on the attempted-murder conviction improper, and upheld the consecutive sentences. The Minnesota Supreme Court granted review, granted Bilbro's motion to strike part of the State's response brief, reversed the ruling that the consecutive sentences were authorized, and remanded for concurrent sentences.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case is remanded to the district court for imposition of concurrent sentences. The Minnesota Supreme Court retained jurisdiction solely for the subsequent filing of the opinion and directed that judgment be entered immediately.

CASES CITED

- Bilbro v. State, No. A17-1566, 2018 WL 3340453 (Minn. App. July 9, 2018)

OPINION

PER CURIAM.

In 2008, appellant Melvin Bilbro entered a guilty plea to one count of attempted second-degree intentional murder, Minn. Stat. §§ 609.17,.19, subd. 1(1) (2018), and one count of second-degree

criminal sexual conduct, Minn. Stat. § 609.343, subd. 1 (2018).

The State agreed to dismiss two other counts and waived its opportunity to seek an enhanced sentence. The district court accepted Bilbro's plea and convicted him of the two charges. At sentencing, the State argued for consecutive sentences. Bilbro asked the court to impose concurrent sentences.

The district court imposed the presumptive guidelines sentence for each count (163 months and 36 months respectively), and required the sentences to be served consecutively. Bilbro was also sentenced to a 10-year conditional-release term.

In 2017, Bilbro filed a motion to correct his sentence under Rule 27.03, subdivision 9, of the Rules of Criminal Procedure. In his motion, Bilbro asserted that at the time of his sentencing, the Minnesota Sentencing Guidelines did not allow consecutive sentences to be imposed for his two offenses except as a departure supported by written findings.

The district court construed the motion as a postconviction petition, and then denied the petition as untimely under Minn. Stat. § 590.01, subd. 4 (2018). The court of appeals affirmed in part and reversed in part. *Bilbro v. State*, No. A17-1566, 2018 WL 3340453 (Minn. App. July 9, 2018).

The court concluded that the district court erred in construing Bilbro's motion as a postconviction petition, erred in imposing a conditional-release term on the charge of attempted second-degree murder, but permissibly imposed consecutive sentences. *Id.* at *1.1 We granted Bilbro's petition for review. During briefing, Bilbro moved to strike the State's response brief, in whole or in part, contending that the State waived its argument that the district court correctly treated Bilbro's motion as a postconviction petition.

We held oral argument on December 3, 2018. Based upon all the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT: 1. The motion of appellant Melvin Bilbro to strike the State's response brief, in whole or in part, is granted with respect to the portion of the brief that argues that the district court correctly treated Bilbro's motion as a postconviction petition.

2. The decision of the court of appeals holding that Bilbro's consecutive sentences were authorized by law is reversed, and this case is remanded to the district court for imposition of concurrent sentences. This order is issued with the opinion to follow.

The Clerk of the Appellate Courts shall enter judgment immediately. We retain *837jurisdiction solely for the purpose of the subsequent filing of the opinion in this case. BY THE COURT: /s/ _____ Lorie S. Gildea Chief Justice The court of appeals' decision directing the district court to vacate Bilbro's conditional-release term on the attempted second-degree murder charge is not before us.

