

SUPREME COURT OF MINNESOTA

Bilbro v. State

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