

XII. Index of Appendices

- A. Decision of the MN Court of Appeals
- B. Decision of the MN Supreme Court
- C. Second Amended Criminal Complaint
- D. Third Amended Criminal Complaint
- E. Petitioner's Pro Se Brief Filed in MN Court of Appeals
- F. State of Minnesota's Reply to Petitioner's Pro Se Brief
- G. Petitioner's Response (Part I) to State's Reply
- H. Petitioner's Response (Part II) to State's Reply
- I. Petitioner's Motion to MN Supreme Court to appoint effective counsel and restart appeal process.
- J. Affidavit of Sean Roulo regarding appendix items
- K. Petitioner's petition for further review to MN Supreme Court

Appendix A

State v. Roulo, 2023 Minn. App. Unpub. LEXIS 24, 2023 WL 126425 (Minn. Ct. App.
January 9, 2023)

Opinion

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A St. Louis County jury found Sean William Roulo guilty of criminal sexual conduct based on evidence that he sexually abused his two stepdaughters when they were young. We conclude that the district court did not err by granting the state's motion to amend the complaint during trial. We also conclude that the district court did not err by imposing two sentences on two counts of criminal sexual conduct involving the same victim. Therefore, we affirm.

FACTS

In July 2020, the state filed a criminal complaint against Roulo based on reports by two adult stepdaughters, who then were 25 and 21 years old, that he had sexually abused them when they were much younger. The complaint alleged the following counts: (1) first-degree criminal sexual conduct, in violation of § 609.342, subd. 1(g) (2004), based on the allegation that Roulo engaged in sexual penetration of S.H. between May 2006 and May 2008, when she was between 10 and 12 years of age; (2) first-degree criminal sexual conduct, in violation of § 609.342, subd. 1(h)(iii), based on the allegation that Roulo engaged in multiple acts of sexual penetration of S.H. between May 2006 and May 2011, when she was between 10 and 15 years of age; (3) second-degree criminal sexual conduct, in violation of § 609.343, subd. 1(h)(iii) (2004), based on the allegation that Roulo engaged in multiple acts of sexual contact with B.H. between May 2001 and May 2015, when she was between 2 and 15 years of age; and (4) fourth-degree criminal sexual conduct, in violation of § 609.345, subd. 1(g)(iii) (2004), based on the allegation that Roulo engaged in multiple acts of sexual

second-degree criminal sexual conduct with respect to B.H. Specifically, the state sought to renumber count 3, which alleged multiple acts of sexual contact over an extended period of time, to count 4 and to slightly change the applicable date range. The state also sought to insert a new count 3 to allege a single act of sexual contact, in violation of Minn. Stat. § 609.343, subd. 1(g), with the same date range as the new count 4. Roulo opposed the motion, primarily [*5] on the ground that the amendment would require his attorney to change his plans for examining the remaining witnesses and making closing argument. The district court granted the motion.

The state called one additional witness and rested. Roulo called one witness and testified in his own defense.

The jury found Roulo guilty of the charges in counts 1, 2, and 3 but not guilty of the charge in count 4. The district court imposed a stayed sentence of 21 months of imprisonment on count 1, a stayed sentence of 27 months of imprisonment on count 2, and an executed sentence of 46 months of imprisonment on count 3. Roulo appeals.

DECISION

As an initial matter, we will identify the arguments that have been properly presented on appeal. Roulo initially was represented by an assistant state public defender, who filed a notice of appeal on his behalf and a principal brief. Roulo later sought leave to file a supplemental *pro se* brief. Thereafter the assistant state public defender moved to withdraw as counsel, and we granted that motion. Between March and August of 2022, Roulo filed five motions for extension of time, four of which were granted and the last of which was denied. Roulo never filed a complete [*6] supplemental *pro se* brief. We ultimately filed an order stating that no further briefing would be allowed. Thus, the issues on appeal are the two issues that are presented in the brief that was filed by the assistant state public defender.

I. Amendment of Complaint

than the facts in a particular case.'" Gisege, 561 N.W.2d at 156 (quoting State v. Gayles, 327 N.W.2d 1, 3 (Minn. 1982)). Whether an offense is a lesser-included offense is a question of law. State v. Degroot, 946 N.W.2d 354, 364 (Minn. 2020).

Before the third amendment, the state alleged, as count 3, a charge of second-degree criminal sexual conduct, in violation of section 609.343, subdivision 1(h)(iii), based on the allegation that Roulo engaged in multiple acts of sexual contact with B.H., between May 2007 and May 2015. After the amendment, [*8] the state alleged, in new count 3, a charge of second-degree criminal sexual conduct, in violation of a different subdivision of section 609.343, subdivision 1(g), based on the allegation that Roulo engaged in only a single act of sexual contact with B.H. during the same approximate date range. The only factual difference between the two charges is that new count 3 alleged only a single act instead of multiple acts. Consequently, new count 3 is a lesser-included offense when compared to former count 3 (which was renumbered count 4) because "it is impossible to commit the greater offense," which alleged multiple acts under subdivision 1(h)(iii), "without committing the lesser offense," which alleged a single act under subdivision 1(g). See Bertsch, 707 N.W.2d at 664.

Roulo also contends that the district court erred because it allowed the state to add an offense that is identical to the offense that the district court did not allow the state to add at the outset of trial. In response, the state asserts that, at the outset of trial, the prosecutor sought to amend then-existing count 4 by increasing the severity of the charged offense from fourth-degree criminal sexual conduct to second-degree criminal sexual conduct. The state also asserts that, at the outset of trial, the prosecutor [*9] sought to allege a violation of subdivision 1(a), which would have required proof that is not required by subdivision 1(g), namely, proof that the victim was under 13 years of age and that Roulo was more than 36 months older. See Minn. Stat. § 609.343, subd. 1(a) (2004). The state is correct that the offense in new count 3 is different from the offense that the state was not allowed to add at the outset of trial.

Thus, the offense alleged in new count 3 is not an additional or different offense.

Roulo also argues that the district court erred by imposing two sentences on counts 1 and 2, both of which alleged second-degree criminal sexual conduct with respect to S.H. **Roulo** contends that two sentences are prohibited on the ground **[*11]** that the two offenses arose from a single behavioral incident.

HN4 In a criminal case, "if a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses." Minn. Stat. § 609.035, subd. 1 (2004). Consequently, "multiple sentences for multiple offenses committed as part of the same behavioral incident are prohibited." State v. Barthman, 938 N.W.2d 257, 265 (Minn. 2020). "To determine whether two or more offenses were committed during a single behavioral incident, we examine two factors: (1) whether the offenses occurred at substantially the same time and place, and (2) whether the conduct was motivated by an effort to obtain a single criminal objective." *Id.* (quotations omitted). The state bears the burden of proving, by a preponderance of the evidence, that multiple offenses did *not* arise from a single behavioral incident. *Id.* at 266. This court applies a clear-error standard of review to a district court's findings of fact and a *de novo* standard of review to the district court's application of the law to given facts. *Id.* at 265.

At the sentencing hearing, the state argued that **Roulo**'s first and second offenses were not committed during a single behavioral incident. But the district court did not make any express **[*12]** findings of fact on the issue. Accordingly, we will review the evidence presented at trial to determine whether it supports the implied finding that **Roulo**'s first and second offenses were not committed during a single behavioral incident. *See id.* at 266-67.

In Barthman, the supreme court considered this issue in the context of an evidentiary record that is remarkably similar to the evidentiary record in this case. The appellant in Barthman was found guilty of two counts of first-degree criminal sexual conduct toward a daughter who was between 10 and 12 years old during the charged period. *Id.* at 262. With respect to the first factor, the parties did not dispute that both offenses occurred in the family's home, but they disputed whether the two incidents occurred at substantially the same time. *Id.* at 266. The victim's testimony was not crystal clear about the

FILED

April 26, 2023

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

A21-1223

State of Minnesota,

Respondent,

vs.

Sean William Roulo,

Petitioner.

O R D E R

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Sean William Roulo for further review is denied.

Dated: April 26, 2023

BY THE COURT:



Lorie S. Gildea
Chief Justice

**Additional material
from this filing is
available in the
Clerk's Office.**