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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0025

Christopher Lee Manska, petitioner,
Appellant,

vs.

Joan Fabian, Commissioner of Corrections, et al.,
Respondents.

Filed December 16, 2008
Affirmed
Johnson, Judge

Rice County District Court
File No. 66-CV-07-3586

Christopher Lee Manska, 6382 McCormack Lake Road, Chisholm, MN 55419-8524 (pro se appellant)

Lori Swanson, Attorney General, Kelly S. Kemp, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, MN 55101-2127 (for respondents)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

The commissioner of corrections extended Christopher Lee Manska's incarceration by 30 days because Manska refused to participate in a prison-based chemical-dependency-treatment program. The district court denied Manska's petition for

a writ of habeas corpus. We conclude that the commissioner acted within her statutory authority, that Manska's petition does not state a claim of disability discrimination, and that Manska was not denied due process of law. Therefore, we affirm.

FACTS

In October 2006, Manska was serving a 69-month sentence that was imposed following his conviction of refusal to submit to a chemical test in violation of Minn. Stat. § 169A.20, subd. 2 (2002). Department of Corrections officials at the Faribault correctional facility ordered Manska to participate in a chemical-dependency-treatment program. Manska refused. The department issued Manska a notice of violation of Offender Disciplinary Regulation (ODR) 510, which states, in relevant part: "No offender shall refuse an order from staff to enter into treatment or refuse to participate in the pre-treatment interview after having been directed to participate by a Program Review Team." Manska admitted his guilt to the violation and waived his right to a hearing by signing a document entitled "Waiver of Hearing -- Plea of Guilty." Consequently, the department extended Manska's release date by 30 days.

In September 2007, Manska filed a petition for a writ of habeas corpus in the Rice County District Court. He alleged that he is disabled because of a stress disorder, which, he contends, caused him to decide not to participate in the chemical-dependency-treatment program. He claimed that the commissioner engaged in disability discrimination by extending his release date because of his non-participation in the program. The district court denied the petition. Manska appeals.

D E C I S I O N

I. Justiciability

This court deemed Manska's appeal to be submitted and ready for disposition as of September 3, 2008. The district court record and the parties' appellate briefs noted, however, that Manska's release from the Faribault correctional facility was scheduled for June 24, 2008. This information required us to determine whether the appeal is moot. *See In re Application of Minnegasco*, 565 N.W.2d 706, 710 (Minn. 1997). Thus, we asked the parties to submit supplemental briefs to supply information concerning Manska's status and to address the issue of mootness.

Appellate courts "decide only actual controversies and avoid advisory opinions." *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). A case is moot if there is no justiciable controversy for a court to decide. *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005); *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 321 (Minn. App. 2007). A justiciable controversy is one that "involves definite and concrete assertions of right," *In re Risk Level Determination of J.V.*, 741 N.W.2d 612, 614 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008), and "allows for specific relief by a decree or judgment of a specific character as distinguished from an advisory opinion predicated on hypothetical facts," *Sviggum*, 732 N.W.2d at 321 (citing *Holiday Acres No. 3 v. Midwest Fed. Sav. & Loan Ass'n of Minneapolis*, 271 N.W.2d 445, 447 (Minn. 1978)). When there is "no injury that a court can redress, the case must be dismissed for lack of justiciability," except in certain "narrowly-defined circumstances." *Sviggum*, 732 N.W.2d at 321. There are two recognized exceptions to the mootness doctrine: first, if an issue is capable

of repetition yet evading review and, second, if collateral consequences may attach to the otherwise moot ruling. *McCaskill*, 603 N.W.2d at 327.

In her supplemental brief, the commissioner informed the court that Manska had been released from custody on August 21, 2008, and presently is on supervised release. The commissioner acknowledged that Manska's refusal to participate in a chemical-dependency-treatment program "could be considered in hypothetical future [supervised released] revocation proceedings." In addition, the commissioner acknowledged that the department of corrections may consider Manska's prison disciplinary record if Manska ever were incarcerated again. The commissioner has broad authority over the conditions of supervised release, *see* Minn. Stat. § 609.3455, subd. 8(b) (2006), and the revocation of a person's supervised release, *see* Minn. Stat. § 244.05, subd. 2 (2006). Given these facts, we conclude that the collateral-consequences exception to mootness applies. In light of this conclusion, we need not analyze whether the capable-of-repetition-yet-evading-review exception also applies.

II. Substance of Petition

A writ of habeas corpus is a statutory remedy that allows a prison inmate to seek "relief from imprisonment or restraint." Minn. Stat. § 589.01 (2006). This court gives great weight to the district court's findings when considering a petition for a writ of habeas corpus and "will uphold the findings if they are reasonably supported by the evidence." *Northwest v. LaFleur*, 583 N.W.2d 589, 591 (Minn. App. 1998), *review denied* (Minn. Nov. 17, 1998). Questions of law, however, are reviewed de novo. *State*

ex. rel. McMaster v. Benson, 495 N.W.2d 613, 614 (Minn. App. 1993), *review denied* (Minn. Mar. 11, 1993).

A. Commissioner's Authority

Manska first argues that the commissioner does not have the authority to extend his incarceration for failing to participate in the chemical-dependency-treatment program. The legislature has granted broad statutory authority to the commissioner to "prescribe reasonable conditions and rules for [an inmate's] employment, conduct, instruction, and discipline within or outside the facility." Minn. Stat. § 241.01, subd. 3a(b) (2006); *see also* Minn. Stat. § 244.04, subd. 2 (2006) (directing commissioner to adopt rules governing inmate discipline). The commissioner's authority includes the authority to administer rehabilitative programs and to discipline inmates who refuse to participate:

> The commissioner shall provide appropriate mental health programs and vocational and educational programs with employment-related goals for inmates. The selection, design and implementation of programs under this section shall be the sole responsibility of the commissioner, acting within the limitations imposed by the funds appropriated for such programs.
>
> . . . .
>
> The commissioner may impose disciplinary sanctions upon any inmate who refuses to participate in rehabilitative programs.

Minn. Stat. § 244.03 (2006). Furthermore, the discipline that may be imposed by the commissioner includes the extension of an inmate's period of incarceration. Minn. Stat. § 244.05, subd. 1b(a) (2006).

In this case, the commissioner found that Manska violated ODR 510, which prohibits inmates from refusing an order to enter treatment. In this situation, the commissioner has express statutory authority to extend Manska's length of confinement.

B. Claims of Disability Discrimination

Manska next argues that the commissioner discriminated against him on the basis of a disability by disciplining him for refusing to participate in the treatment program. The district court concluded that Manska had failed to state a claim for relief.

Manska relies on the Americans with Disabilities Act (ADA), the Minnesota Human Rights Act (MHRA), and the federal Rehabilitation Act (Rehab Act). Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132 (2000). The United States Supreme Court has held that the ADA applies to state prisons. *Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206, 209, 118 S. Ct. 1952, 1954 (1998). Similarly, section 504 of the Rehab Act states in relevant part that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a) (2000). Likewise, the MHRA provides that "[i]t is an unfair discriminatory practice to discriminate against any person in . . . full utilization of or benefit from any public service because of . . . disability . . . unless the public service can demonstrate that providing the access would impose an undue hardship

on its operation." Minn. Stat. § 363A.12, subd. 1 (2006). The ADA and the Rehab Act are "similar in substance," and, thus, "cases interpreting either are applicable and interchangeable." *Gorman v. Bartch*, 152 F.3d 907, 912 (8th Cir. 1998) (quotation omitted). Furthermore, because the purposes of the MHRA and ADA are similar, caselaw under the ADA may be used to interpret the MHRA. *Kolton v. County of Anoka*, 645 N.W.2d 403, 408, 410 (Minn. 2002).

"To state a prima facie claim under [title II of] the ADA, a plaintiff must show: 1) he is a person with a disability as defined by statute; 2) he is otherwise qualified for the benefit in question; and 3) he was excluded from the benefit due to discrimination based upon disability." *Randolph v. Rodgers*, 170 F.3d 850, 858 (8th Cir. 1999). We need not determine whether Manska can satisfy the first element because he cannot satisfy the third element. The commissioner did not exclude Manska from the treatment program. Manska excluded himself. Manska has not cited any legal authority for the proposition that the ADA, the Rehab Act, or the MHRA may be deployed to avoid the consequences of an inmate's refusal to participate in rehabilitative programs, and we are not aware of any such authority. The existing caselaw indicates that, in the prison context, the ADA may be used only to ensure that prison officials do not prevent disabled inmates from participating in available treatment programs or from receiving other benefits. *See, e.g.*, *Yeskey*, 524 U.S. at 208-09, 118 S. Ct. at 1954 (analyzing claim concerning prison's decision to deny plaintiff admission to boot-camp program because of history of hypertension); *Randolph*, 170 F.3d at 858 (holding that hearing-impaired plaintiff stated

prima facie case based on denial of sign-language interpreter at prison disciplinary hearing). In short, there is no precedent for Manska's claim.

"The burden is on the [habeas] petitioner to show the illegality of his detention." *Case v. Pung*, 413 N.W.2d 261, 262 (Minn. App. 1987), *review denied* (Minn. Nov. 24, 1987). "A habeas corpus hearing is not needed when the defendant does not allege sufficient facts to constitute a prima facie case of relief." *Sanders v. State*, 400 N.W.2d 175, 176 (Minn. App. 1987), *review denied* (Minn. Apr. 17, 1987). Manska has submitted no evidence or argument indicating that the commissioner violated any of the disability discrimination statutes on which he relies. Thus, the district court did not err by declining to conduct an evidentiary hearing and by concluding that Manska failed to state a claim for relief.

C. Procedural Due Process

Manska last argues that he was denied due process of law because the commissioner did not conduct a disciplinary hearing. Manska did not raise the issue of due process in the district court, but the district court nonetheless analyzed such a claim. Because the issue was decided by the district court, and because both parties have briefed it on appeal, we will consider it. *See Tischendorf v. Tischendorf*, 321 N.W.2d 405, 410 (Minn. 1982).

The United States and Minnesota constitutions provide that no person may be deprived of "life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1; *see also* Minn. Const. art. I, § 7. The due process protections under the United States and Minnesota constitutions are identical. *Sartori v. Harnischfeger Corp.*, 432

N.W.2d 448, 453 (Minn. 1988). We apply a de novo standard of review to the question whether a person was afforded procedural due process. *Commissioner of Natural Res. v. Nicollet County Pub. Water/Wetlands Hearings Unit*, 633 N.W.2d 25, 29 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001).

Manska has a protected liberty interest in his supervised-release date, which triggers his right to procedural due process with respect to an extension of that date. *See Johnson v. Fabian*, 735 N.W.2d 295, 302 (Minn. 2007). The United States Supreme Court has held that, in the context of a prison disciplinary hearing, an inmate is entitled to (1) written notice of the claimed violation at least 24 hours before the hearing; (2) an opportunity to present evidence and call witnesses if it will not jeopardize institutional safety or correctional goals; and (3) a written statement from an impartial decision maker explaining the evidence and reasoning relied upon for the disciplinary action. *Wolff v. McDonnell*, 418 U.S. 539, 563-67, 94 S. Ct. 2963, 2978-80 (1974); *see also Hrbek v. Nix*, 12 F.3d 777, 780 (8th Cir. 1993).

Each of the three requirements of *Wolf* is satisfied in this case. First, Manska received notice of the alleged violation. The notice is signed by the sergeant who delivered it, who noted that Manska refused to sign the document to indicate his receipt of it. Second, Manska had an opportunity to present evidence at a disciplinary hearing but declined to do so. Manska signed the second page of the notice, which is entitled, “Waiver of Hearing -- Plea of Guilty.” Manska argues that he lacked the capacity to waive his right to a hearing, but he has not put forward evidence sufficient to prove a lack of capacity. His claim of disability is merely that he cannot withstand the stress of the

treatment program, not that he lacks the mental capacity to knowingly and voluntarily exercise his rights. Third, Manska received a written notice explaining why his incarceration was extended by 30 days. Thus, the commissioner did not violate Manska's right to due process of law.

Affirmed.