STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1724

Lovell N. Oates, petitioner,
Appellant,

vs.

Minnesota Department of
Corrections, et al.,
Respondents,

Scott McNurlin, Sheriff,
Respondent.

Filed July 17, 2017
Affirmed
Johnson, Judge

Goodhue County District Court
File No. 25-CV-16-1131

Lovell N. Oates, Faribault, Minnesota (*pro se* appellant)

Lori Swanson, Attorney General, Kelly S. Kemp, Assistant Attorney General, St. Paul, Minnesota (for respondents Department of Corrections and commissioner)

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

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

JOHNSON, Judge

In 1999, Lovell N. Oates was convicted of one count of second-degree murder and four counts of second-degree assault and was sentenced to 378 months of imprisonment.

In 2016, he petitioned for a writ of habeas corpus. He alleges that the commissioner of corrections is unlawfully detaining him after the expiration of one of his sentences and that the commissioner is maintaining inaccurate records concerning his release date. He also alleges that the commissioner unlawfully extended his sentence by finding that he violated a prison-discipline rule. The district court denied the petition. We affirm.

FACTS

In September 1998, Oates fired a handgun inside the South Beach nightclub in downtown Minneapolis, killing one person and injuring two others. *State v. Oates*, 611 N.W.2d 580, 582-83 (Minn. App. 2000), *review denied* (Minn. Aug. 22, 2000). In May 1999, a Hennepin County jury found him guilty of one count of second-degree murder and four counts of second-degree assault. *Id.* at 583. The district court imposed sentences of 306 months of imprisonment on the murder offense (count 1) and 36 months of imprisonment on each of the assault offenses (counts 2, 3, 4, and 5). *Id.* at 583-84. The district court ordered counts 2 and 3 to run concurrently with count 1, and ordered counts 4 and 5 to run consecutively to the first sentence and to each other. *Id.* Accordingly, Oates was committed to the custody of the commissioner of corrections "for a term not to exceed 378 months," with jail credit of 223 days.

This court affirmed Oates's convictions and sentences on direct appeal. *Id.* at 587. Between 2002 and 2016, Oates serially filed six postconviction petitions and one motion to correct his sentence. Each time, the postconviction court or district court denied relief, and this court affirmed. *See Oates v. State*, No. C7-02-2269, 2003 WL 21911197 (Minn. App. Aug. 12, 2003); *Oates v. State*, No. A04-1749, 2005 WL 1545431 (Minn. App. July 5,

2005) (considering second and third postconviction actions), *review denied* (Minn. Aug. 24, 2005); *Oates v. State*, No. A06-1279 (Minn. App. Aug. 1, 2007) (order op.), *review denied* (Minn. Nov. 13, 2007); *Oates v. State*, No. A07-2169, 2008 WL 5396824 (Minn. App. Dec. 30, 2008), *review denied* (Minn. Mar. 17, 2009); *Oates v. State*, No. A12-0625, 2012 WL 6554531 (Minn. App. Dec. 17, 2012); *Oates v. State*, No. A15-0788, 2016 WL 687465 (Minn. App. Feb. 22, 2016), *review denied* (Minn. Jan. 17, 2017).

In May 2016, Oates commenced this action by filing several *pro se* papers. At the time, Oates was being held in the Goodhue County jail pursuant to an agreement between the department of corrections (DOC) and the county. Accordingly, the petition names two respondents: the commissioner of corrections and the Goodhue County sheriff. The district court treated Oates's filings as a petition for a writ of habeas corpus and, in July 2016, held an evidentiary hearing, at which Oates was represented by private counsel. Oates did not testify. The respondents presented the testimony of one witness: the manager and director of the DOC's records and sentence-administration unit. In September 2016, the district court denied Oates's request for relief. Oates appeals.

D E C I S I O N

The privilege of filing a writ of habeas corpus is guaranteed by the state constitution. Minn. Const. art. I, § 7. The legislature has fulfilled that guarantee by enacting a statute that provides a habeas remedy. *See* Minn. Stat. §§ 589.01-.35 (2014). The relevant chapter begins by stating:

> A person imprisoned or otherwise restrained of liberty, except persons committed or detained by virtue of the final judgment of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon the judgment, may apply for a writ of habeas corpus to obtain relief from imprisonment or restraint.

Minn. Stat. § 589.01. A prisoner may use a habeas petition to obtain relief from custody that is in "violation of a constitutional right." *Beaulieu v. Minnesota Dep't of Human Servs.*, 798 N.W.2d 542, 548 (Minn. App. 2011), *aff'd on other grounds*, 825 N.W.2d 716 (Minn. 2013). A prisoner also may use a habeas petition to obtain relief from a decision of the commissioner of corrections that implements a sentence. *State v. Schnagl*, 859 N.W.2d 297, 301-03 (Minn. 2015). A habeas petitioner bears the burden of proving that his detention is unlawful. *State ex rel. Adams v. Rigg*, 252 Minn. 283, 285, 89 N.W.2d 898, 901 (1958); *Bedell v. Roy*, 853 N.W.2d 827, 829 (Minn. App. 2014), *review denied* (Minn. Oct. 28, 2014).

I. Administration of Sentence

Oates first argues that the district court erred by rejecting his claim that the respondents are, in three ways, unlawfully administering his sentence.

A. Aggregation of Sentences

Oates contends that the commissioner is unlawfully detaining him by improperly treating his prison terms on counts 4 and 5 as being consecutive to the prison terms on counts 1, 2, and 3, which he asserts is contrary to what the district court ordered. Oates contends that the commissioner should have placed him on supervised release on or about January 12, 2016, when he had served two-thirds of his 306-month prison term on count 1.

Oates further contends that, after he serves the concurrent terms of supervised release on counts 1, 2, and 3, the commissioner then should require him to serve alternating terms of imprisonment and supervised release on counts 4 and 5.

"If two or more sentences are consecutively executed at the same time and by the same court, the Commissioner of Corrections must aggregate the sentence durations into a single fixed sentence. The aggregate term of imprisonment must be served before the aggregate supervised release period." Minn. Sent. Guidelines 2.F (2014). "The two-thirds terms of imprisonment are aggregated and served consecutively; then, the one-third supervised release terms are aggregated and served consecutively as well." *Id.*, cmt. 2.F.02.

At the sentencing hearing, the district court stated that Oates's term of imprisonment on his consecutive sentences was "not to exceed 378 months." The district court did not expressly state that Oates's consecutive sentences should be "aggregated." Likewise, Oates's warrant of commitment does not expressly state that his sentences should be aggregated. Nonetheless, aggregation is required by law. The commissioner's records show that the sentences on count 4 and count 5 are "aggregated" with the concurrent sentences on counts 1, 2, and 3, which requires Oates to serve all consecutive terms of imprisonment before serving all consecutive terms of supervised release. The commissioner's treatment of Oates's consecutive sentences complies with the sentencing guidelines.

Thus, the commissioner is not unlawfully detaining Oates beyond the term of his prison sentences on counts 1, 2, and 3.

B. Criminal History Score

Oates also contends that the commissioner unlawfully recognizes an illegal sentence because the district court relied on an erroneous criminal-history score at the time of sentencing. A petition for a writ of habeas corpus "may not be used as a cover for a collateral attack upon a judgment of a competent tribunal which had jurisdiction of the subject matter and of the person of the defendant." *Breeding v. Utecht*, 239 Minn. 137, 139, 59 N.W.2d 314, 316 (1953). Accordingly, a habeas petitioner is not entitled to habeas relief on an issue that he previously raised without success in a prior proceeding. *Joelson v. O'Keefe*, 594 N.W.2d 905, 908 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). Oates previously challenged the district court's calculation of his criminal-history score in his latest postconviction action. *See Oates*, 2016 WL 687465, at *3. He was unsuccessful in the postconviction court, and this court affirmed. *See id.* at *3-4. Thus, Oates may not assert the same challenge in this habeas proceeding.

C. Jail Credit

Oates also contends that the commissioner unlawfully maintains inaccurate records of his projected release date by not recognizing the proper amount of jail credit.

At the sentencing hearing on June 8, 1999, the district court awarded Oates "credit for 223 days served prior to this commitment." In 2012, the commissioner's records showed that 223 days of jail credit had been applied to Oates's concurrent sentences on counts 1, 2, and 3 and that no additional credit had been applied to counts 4 or 5. In 2015, Oates informed the DOC's sentence administrator that the register of actions in the district court file in his criminal case showed that he had 669 days of jail credit, as follows: 223

days with respect to counts 1, 2, and 3; 223 days with respect to count 4; and 223 days with respect to count 5. The DOC sentence administrator contacted the Hennepin County District Court "for clarification." On January 27, 2016, the district court issued an "Order for Case Amendment," which states: "Defendant has 223 days of jail credit on counts 1, 2, and 3. Defendant has no credit on counts 4 and 5. 223 days credit to be removed from counts 4 and 5 as this is an unlawful award of jail credit." In this habeas case, the Goodhue County District Court determined that Oates is entitled to only 223 days of jail credit and that jail credit with respect to counts 4 and 5 would be duplicative. The district court concluded, "Nothing was taken away from [Oates]."

Jail credit is "the number of days spent in custody in connection with the offense . . . being sentenced." Minn. R. Crim. P. 27.03, subd. 4(B); *see also* Minn. Stat. § 609.145 (2016); Minn. Sent. Guidelines 3.C (2014). If a district court imposes consecutive sentences, the defendant receives jail credit for only the first sentence. *State v. Patricelli*, 357 N.W.2d 89, 94 (Minn. 1984). At Oates's sentencing hearing, the district court imposed consecutive sentences and determined that Oates had spent 223 days in custody prior to his commitment. As a matter of law, Oates was and is entitled to only 223 days of jail credit, which must be applied to the concurrent sentences on counts 1, 2, and 3. *See id.* The commissioner created and maintains records that reflect the correct amount of jail credit ordered by the district court at Oates's sentencing hearing. It is somewhat anomalous that the court administrator's register of actions inaccurately stated that 223 days of jail credit should apply to each of Oates's consecutive terms of imprisonment. Nonetheless, in light of the Hennepin County District Court's clarification of the issue, there now is no doubt

that the commissioner's records are correct. Thus, the respondents are not unlawfully maintaining inaccurate records of Oates's projected release date by not recognizing the proper amount of jail credit.

Therefore, the district court did not err by denying Oates's petition for a writ of habeas corpus with respect to his claims that the respondents are unlawfully administering his sentence.

II. Prison Discipline

Oates also argues that the commissioner violated his right to due process by extending the duration of his incarceration based on his violation of a prison-discipline rule.

In June 1999, a DOC program review team (PRT) determined that Oates should be required to submit to a chemical-dependency assessment. *See* Minn. Dep't of Corr. R. 500.308. In September 2015, a DOC employee attempted to perform a chemical-dependency assessment, which might have resulted in a recommendation that Oates engage in chemical-dependency treatment. Oates refused to submit to the chemical-dependency assessment. The DOC issued Oates a notice of violation, which informed him that his failure to submit to an assessment is a violation of a DOC prison-discipline rule. *See* Minn. Dep't of Corr. Offender Discipline R. 511.

Oates requested a hearing on the alleged violation. He was represented by counsel at the hearing. The hearing officer found that Oates violated rule 511 by refusing to comply with the requirement that he submit to a chemical-dependency assessment. The hearing

officer imposed a penalty of 30 days of extended incarceration. Oates pursued an administrative appeal to the warden, which was denied.

In his habeas petition, Oates alleged that the DOC violated his right to procedural due process by imposing 30 days of extended incarceration based on his failure to submit to a chemical-dependency assessment. The district court concluded that Oates's right to procedural due process was not violated. On appeal, Oates contends that the district court erred because he never received a copy of the chemical-dependency directive with which he allegedly failed to comply.

The Fourteenth Amendment to the United States Constitution provides that no person may be deprived of "life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1. A prisoner is entitled to due process in a prison-discipline process if he has a protected liberty or property interest. *Carrillo v. Fabian*, 701 N.W.2d 763, 768 (Minn. 2005). If the prison-discipline process results in extended incarceration, a prisoner has a protected liberty interest. *See Johnson v. Fabian*, 735 N.W.2d 295, 302 (Minn. 2007); *Carrillo*, 701 N.W.2d at 773. In that event, the prisoner has a right to:

> (1) advance written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action.

Superintendent v. Hill, 472 U.S. 445, 454, 105 S. Ct. 2768, 2773 (1985) (citing *Wolff v. McDonnell*, 418 U.S. 539, 563-67, 94 S. Ct. 2963, 2978-80 (1974)).

Oates contends that he was not given a directive to submit to a chemical-dependency assessment and, thus, did not violate rule 511. In essence, he contends that the evidence is insufficient to support the finding that he violated a DOC prison-discipline rule. In prison-discipline proceedings, the Due Process Clause requires a hearing officer to apply a preponderance-of-the-evidence standard. *Carrillo*, 701 N.W.2d at 777. On judicial review of the hearing officer's decision, a court seeks to determine only whether the hearing officer's findings are supported by "some evidence." *Id.* at 775-76 & 775, n.8; *see also Hill*, 472 U.S. at 455-56, 105 S. Ct. at 2774.

At Oates's hearing, the hearing officer received the following forms of evidence: (1) a PRT report dated June 29, 1999; (2) several internal documents showing that Oates had not yet completed chemical-dependency treatment that he was directed to complete; (3) the testimony and report of a chemical-dependency assessor who attempted to assess Oates on September 1, 2015; and (4) a notice of violation, dated September 1, 2015, which Oates refused to sign. The June 29, 1999 report shows that the PRT issued a "directive" that Oates comply with an "Assessment & Completion of Recommendations." The report also notes, "Mr. Oates was informed that his failure to fulfill the above directive(s) may result in disciplinary action, not only the first time, but every time that he refuses." The DOC employee who attempted to conduct a chemical-dependency assessment testified that Oates had a standing chemical-dependency directive, that she met with Oates for the purpose of completing an assessment, and that Oates refused to submit to the assessment. In light of this evidence, the hearing officer's findings that Oates violated rule 511 are supported by "some evidence" in the record. *Carrillo*, 701 N.W.2d at 777. Thus, the

district court did not err by concluding that respondents provided Oates with due process in his prison-discipline proceeding.

In sum, the district court did not err by denying Oates's petition for a writ of habeas corpus.

Affirmed.