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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1845**

James Wieseler, petitioner,
Appellant,

vs.

Eddie Miles, Warden, Minnesota Department of Corrections - Faribault,
Respondent.

**Filed July 3, 2017
Affirmed
Halbrooks, Judge**

Rice County District Court
File No. 66-CV-16-1918

James Wieseler, Faribault, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Kelly S. Kemp, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and
Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's denial of his petition for habeas relief, arguing that the Minnesota Department of Corrections (DOC) violated his substantive due-process rights by extending his projected release date. We affirm.

FACTS

In 2007, appellant James Wieseler pleaded guilty to felony incest against his daughter and entered an *Alford* plea¹ to second-degree criminal sexual conduct against his grandson. The parties agreed at Wieseler's plea hearing that he could be required to participate in sex-offender treatment, but that his refusal to admit to sexual contact with his grandson would not violate his probation. This understanding was not discussed again at sentencing. The district court stayed execution of a 45-month sentence and placed Wieseler on probation for 25 years.

As a condition of his probation, Wieseler was required to enroll in sex-offender treatment. He enrolled in a treatment program but was terminated "possibly for refusal to admit to sexually abusing his grandson." The district court revoked his probation and executed his 45-month prison sentence, ordering a maximum term of 15 months on supervised release and a ten-year conditional-release term.

¹ A district court may constitutionally accept a defendant's guilty plea even though the defendant maintains innocence. *North Carolina v. Alford*, 400 U.S. 25, 38, 91 S. Ct. 160, 168 (1970).

Wieseler completed his prison sentence and was placed on supervised release in May 2010; one condition of his supervised release was completion of a sex-offender treatment program. Although Wieseler enrolled in a program, he was terminated from the program less than one month later “for failing to take responsibility for abusing his grandson.” The DOC revoked his supervised release. The DOC conditionally released Wieseler again in August 2011 on the condition that he complete sex-offender treatment, but he refused to comply with the program’s enrollment requirements. Nevertheless, he remained on conditional release for nearly three years.

In July 2014, the DOC revoked Wieseler’s conditional release because he violated multiple conditions of release by initiating contact with his daughter, having contact with children, and attending his daughter’s church. The DOC directed Wieseler to complete sex-offender treatment and gave him a projected release date of June 28, 2016. He again refused treatment. On June 20, 2016, the DOC extended his projected release date by one year because he failed to begin sex-offender treatment. His projected release date is June 28, 2017, and his conditional-release term expires on February 16, 2020.

Wieseler petitioned for a writ of habeas relief, requesting the district court to (1) overturn his convictions, (2) vacate a restraining order that prohibits him from contacting his daughter, and (3) correct his projected release date. The district court denied Wieseler’s petition. This appeal follows.

D E C I S I O N

Wieseler’s appeal is limited to the district court’s denial of the request to correct his projected release date, and he argues that the DOC violated his substantive due-process

rights by extending his projected release date for refusing to admit to sexual contact with his grandson. “An appellate court will review a habeas corpus decision de novo where, as here, the facts are undisputed.” *Joelson v. O’Keefe*, 594 N.W.2d 905, 908 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). Wieseler bears the burden of demonstrating the illegality of his detention. *See Case v. Pung*, 413 N.W.2d 261, 262 (Minn. App. 1987), *review denied* (Minn. Nov. 24, 1987).

As a threshold matter, the DOC contends that Wieseler waived his substantive due-process argument because he failed to raise the issue before the district court. “A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). But, as justice requires, we may address issues not argued before the district court. Minn. R. Civ. App. P. 103.04. Constitutional rights may be asserted on appeal in the interests of justice if the parties had adequate time to brief the issues and the issues were implied in the district court. *Tischendorf v. Tischendorf*, 321 N.W.2d 405, 410 (Minn. 1982). Because Wieseler’s due-process challenge was implied in the district court and comprises his entire argument on appeal, we address it in the interests of justice.

The United States and Minnesota Constitutions protect individuals from the deprivation of life, liberty, or property without due process of the law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7; *see State v. Krause*, 817 N.W.2d 136, 144 (Minn. 2012) (noting that the due-process protections under the Minnesota Constitution are identical to the protections under the United States Constitution). Substantive due process protects “an

individual from certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them.” *State v. Hill*, 871 N.W.2d 900, 906 (Minn. 2015) (quotation omitted). The first step in our review of a substantive due-process challenge is to identify Wieseler’s asserted constitutional right “and the government conduct allegedly depriving [him] of that right.” *Id.* at 907 (alteration in original).

Wieseler argues that the DOC violated his substantive due-process rights by extending his projected release date. Consistent with his *Alford* plea, he maintains his innocence and refuses to admit in treatment that he had sexual contact with his grandson.

We have previously held that a criminal defendant who enters an *Alford* plea does not have “a protected liberty interest in denying conduct for which he has been lawfully convicted.” *Northwest v. LaFleur*, 583 N.W.2d 589, 591 (Minn. App. 1998) (stating that a criminal defendant’s *Alford* plea does not involve a “bargain for a right of silence in any context but of his plea”), *review denied* (Minn. Nov. 17, 1998). Moreover, a projected release date is “a date in the future at which an inmate will be released providing the inmate’s behavior is satisfactory, the release date was based on complete and accurate information, and the inmate is not considered to be a risk to the public at the time of release.” Minn. R. 2940.0100, subp. 21 (2015). Because a projected release date is subject to these requirements, there is no guarantee that an inmate will be released on a specific date.

Because Wieseler has no protected liberty interest in denying the underlying conduct from his conviction of second-degree criminal sexual conduct after entry of his *Alford* plea and because a projected release date does not guarantee an inmate’s release,

we conclude that the DOC did not violate Wieseler's constitutional rights by extending his projected release date by one year. The district court properly exercised its discretion by denying Wieseler's habeas petition.

Affirmed.