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STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1999

Joseph Bergeron, petitioner,
Appellant,

vs.

Tom Roy, Commissioner of Corrections,
Respondent.

Filed July 10, 2017
Affirmed
Schellhas, Judge

Washington County District Court
File No. 82-CV-16-2701

Joseph Bergeron, Bayport, 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.*

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

SCHELLHAS, Judge

Appellant asks us to reverse the denial of his claims for habeas relief based on respondent's revocation of his supervised release. We affirm.

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

FACTS

In September 1988, appellant Joseph Bergeron burglarized a home and fatally stabbed its resident. After a jury trial, the district court sentenced Bergeron for first-degree murder while committing burglary and imposed a life sentence. The supreme court affirmed Bergeron's conviction. *State v. Bergeron*, 452 N.W.2d 918 (Minn. 1990). Bergeron became eligible for supervised release after he "served a minimum term of imprisonment of 17 years." Minn. Stat. § 244.05, subd. 4 (1988).

In February 2011, respondent Tom Roy, Commissioner of Corrections (commissioner), placed Bergeron on intensive supervised release with conditions, including abstention from the use or possession of alcohol. In December 2011, Bergeron admitted to violating a supervised-release curfew condition and agreed to restructured conditions, including abstention from the use or possession of alcohol. In February 2013, the commissioner again restructured Bergeron's supervised-release conditions after he admitted that he had violated his supervised-release approved-residence condition. His restructured supervised-release conditions included abstention from the use or possession of alcohol.

In October 2014, Bergeron was charged with two counts of misdemeanor driving while intoxicated (DWI), misdemeanor fleeing a peace officer, and gross misdemeanor obstructing legal process.[1] Bergeron immediately reported the pending criminal charges to

[1] On June 4, 2015, Bergeron pleaded guilty to one count of misdemeanor DWI and was sentenced to 90 days in the workhouse with credit for 90 days. The other charges were dismissed.

his supervising agent, and he was arrested on a Minnesota Department of Corrections (DOC) warrant on October 8 for alleged violations of the alcohol-abstention and law-abiding conditions of his supervised release. The DOC initiated proceedings to revoke Bergeron's supervised release.

On October 23, 2014, a DOC hearings and release officer (hearing officer) conducted a preliminary revocation hearing. Bergeron appeared with counsel and denied the alleged violations. After an evidentiary hearing, the hearing officer found that Bergeron had violated the alcohol-abstention condition of his supervised release and that probable cause existed to support the allegation that Bergeron had violated the law-abiding condition. The DOC detained Bergeron pending a final revocation hearing.

In December 2014, Bergeron appeared by way of video conferencing before the commissioner and an advisory panel for a final revocation hearing. Bergeron's counsel was physically present at the hearing. The record contains little other information about the hearing, after which the commissioner continued Bergeron's "review" for one year. Bergeron appealed the commissioner's decision, and the executive officer of hearings and release (executive officer) denied Bergeron's appeal.

In January 2016, the commissioner, with an advisory panel, conducted Bergeron's one-year review hearing,[2] and the commissioner continued Bergeron's "review" for two years. Bergeron petitioned for a writ of habeas corpus, making various claims in connection

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[2] Bergeron waived his right to appear.

with the revocation of his supervised release. The district court denied Bergeron's claims for habeas relief.

This appeal follows.

DECISION

"The writ of habeas corpus is a remedy available to a confined person to obtain relief regarding the custody imposed, or the length of confinement in a given case." *State v. Schnagl*, 859 N.W.2d 297, 301 (Minn. 2015); *see also* Minn. Const. art. I, § 7 ("The privilege of the writ of habeas corpus shall not be suspended unless the public safety requires it in case of rebellion or invasion."); Minn. Stat. § 589.01 (2014) ("A person imprisoned or otherwise restrained of liberty . . . may apply for a writ of habeas corpus to obtain relief from imprisonment or restraint."). Habeas relief is available to a petitioner whose confinement involves "a jurisdictional defect or a constitutional violation." *Beaulieu v. Minn. Dep't of Human Servs.*, 798 N.W.2d 542, 547–48 (Minn. App. 2011), *aff'd on other grounds*, 825 N.W.2d 716 (Minn. 2013); *see also State v. Clark*, 270 Minn. 181, 183, 132 N.W.2d 811, 812 (1965) (noting that "numerous decisions of both th[e Minnesota Supreme] [C]ourt and the Supreme Court of the United States" indicate that "habeas corpus may be used as a postconviction procedure to inquire into alleged violations of freedoms considered to be basic and fundamental").

A habeas petitioner therefore may prevail on claims of restraint-related statutory or regulatory violations if the claimed violations are of constitutional or jurisdictional dimension. *See Schnagl*, 859 N.W.2d at 299, 302–03 (holding, in case involving allegedly illegal extension of conditional-release term, that "judicial review of the Commissioner's

administrative decision implementing the sentence imposed may be obtained by a petition for a writ of habeas corpus"); *State v. Schwartz*, 628 N.W.2d 134, 141 n.3 (Minn. 2001) (noting that judicial review of commissioner's decision to revoke supervised or conditional release is available through petition for writ of habeas corpus). A habeas petitioner bears the burden of proving that his confinement is unlawful due to a jurisdictional defect or a constitutional violation. *See Bedell v. Roy*, 853 N.W.2d 827, 829 (Minn. App. 2014) ("The burden is on the petitioner to show the illegality of his detention." (quotation omitted)), *review denied* (Minn. Oct. 28, 2014); *Beaulieu*, 798 N.W.2d at 548 (holding that "a habeas petition must allege either a lack of jurisdiction or a violation of a constitutional right").

An appeal may be taken from a final order on a petition for habeas corpus as in other civil cases. Minn. Stat. § 589.29 (2014). "The district court's findings in support of a denial of a petition for a writ of habeas corpus are entitled to great weight and will be upheld if reasonably supported by the evidence." *Maiers v. Roy*, 847 N.W.2d 524, 527 (Minn. App. 2014) (quotation omitted), *review denied* (Minn. Aug. 19, 2014). "Questions of law pertaining to a habeas petition are subject to de novo review." *Id.*

Here, based on the revocation of his supervised release,[3] Bergeron appeals the district court's denial of his claims for habeas relief. We therefore must determine whether

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[3] The regulatory definition of "supervised release" excludes the release of an inmate serving a life sentence. *See* Minn. R. 2940.0100, subp. 31 (2015) ("'Supervised release' means that portion of a determinate sentence served by an inmate in the community under supervision and subject to prescribed rules . . . ."). The release of an inmate serving a life sentence is referred to in the regulations as "parole." *See* Minn. R. 2940.0100, subp. 17 (2015) ("'Parole' means that portion of an indeterminate sentence served by an inmate in the community under supervision and subject to prescribed rules."). But the statutory definition of "supervised release" includes the release of an inmate serving a life sentence.

Bergeron has established that the revocation of his supervised release is jurisdictionally defective or violates his constitutional rights. If Bergeron has established no more than revocation in violation of applicable statutory or regulatory mandates, without also establishing a corollary constitutional violation or jurisdiction defect, then we must conclude that he is not entitled to habeas relief. *See Beaulieu*, 798 N.W.2d at 548 (holding that "a habeas petition must allege either a lack of jurisdiction or a violation of a constitutional right").

"A person on supervised release remains in the state's legal custody and is subject to re-incarceration for breach of a condition of release." *Schwartz*, 628 N.W.2d at 139; *see also* Minn. Stat. § 244.05, subd. 3 ("If an inmate violates the conditions of the inmate's supervised release imposed by the commissioner, the commissioner may . . . revoke the inmate's supervised release and reimprison the inmate . . . ."). But the revocation of supervised release is subject to constitutional, statutory, and regulatory limits.

One such limit is a parolee's due-process right to a two-stage revocation hearing "structured to assure that the finding of a parole violation will be based on verified facts and that the exercise of discretion will be informed by an accurate knowledge of the parolee's behavior."[4] *Morrissey v. Brewer*, 408 U.S. 471, 484–85, 487–89, 92 S. Ct. 2593,

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See Minn. Stat. §§ 244.01, subd. 7 ("'Supervised release' means the release of an inmate pursuant to section 244.05."), .05 (authorizing commissioner to release inmates from prison, including most inmates serving life sentences, subject to "conditions of . . . supervised release imposed by the commissioner") (2014). Throughout this opinion, we use the statutory definition of "supervised release," not the regulatory definition.

[4] "Supervised release is the current term for the release practice formally known as parole." *Schwartz*, 628 N.W.2d at 139.

2602–03 (1972); *see Gagnon v. Scarpelli*, 411 U.S. 778, 786, 93 S. Ct. 1756, 1761 (1973) (stating that "*Morrissey* mandated preliminary and final revocation hearings" for parole revocation). "At the preliminary hearing, a . . . parolee is entitled to notice of the alleged violations of . . . parole, an opportunity to appear and to present evidence in his own behalf, a conditional right to confront adverse witnesses, an independent decisionmaker, and a written report of the hearing." *Gagnon*, 411 U.S. at 786, 92 S. Ct. at 1761. The "minimum requirements of due process" at the final hearing include:

> (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a neutral and detached hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.

Morrissey, 408 U.S. at 489, 92 S. Ct. at 2604 (quotation marks omitted). The final hearing also must occur "within a reasonable time after the parolee is taken into custody." *Id.* at 488, 92 S. Ct. at 2603–04.

Minnesota statute accordingly mandates that "[p]rocedures for the revocation of [supervised or conditional] release shall provide due process of law for the inmate" and directs the commissioner to "adopt by rule standards and procedures for the revocation of supervised or conditional release." Minn. Stat. § 244.05, subd. 2. In response to the statutory directive, Minnesota regulations set forth standards and procedures for the revocation of supervised release. Minn. R. 2940.3500–.4500 (2015).

Those regulatory standards and procedures reflect some—but not all—of the due-process mandates discussed above. *Compare* Minn. R. 2940.3500, subp. 1 ("Separate probable cause hearings may be held if circumstances warrant."), *with Gagnon*, 411 U.S. at 786, 93 S. Ct. at 1761 (stating that "*Morrissey* mandated preliminary and final revocation hearings" for parole revocation). The standards and procedures sometimes exceed in specificity and rigor the due-process limits identified by the U.S. Supreme Court. *Compare* Minn. R. 2940.3500, subp. 2 ("All revocation or separate probable cause hearings must be held within 12 working days of the releasee's availability to Department of Corrections."), *with Morrissey*, 408 U.S. at 488, 92 S. Ct. at 2603–04 (stating that final hearing must occur "within a reasonable time after the parolee is taken into custody" and remarking that "[a] lapse of two months . . . would not appear to be unreasonable").

Another limit on the revocation of supervised release is that the commissioner must "specify the period of revocation for each violation of [supervised or conditional] release." Minn. Stat. § 244.05, subd. 2. Minnesota regulation echoes that statutory limit by providing that "[o]ffenders who have violated the conditions of parole or supervised release and who have been returned to institutional status shall be assigned a release date and a term of reimprisonment." Minn. R. 2940.3800.

The period of revocation, i.e., term of reimprisonment, is also limited. *See* Minn. Stat. § 244.05, subd. 3 ("If an inmate violates the conditions of the inmate's supervised release imposed by the commissioner, the commissioner may . . . revoke the inmate's supervised release and reimprison the inmate *for the appropriate amount of time*." (emphasis added)). To begin, "[t]he period of time for which a supervised release may be

revoked may not exceed the period of time remaining in the inmate's sentence." *Id.* Minnesota regulation allows for reimprisonment

> A. up to six months inclusive of any time spent in jail in connection with the violation, for violations of conditions of parole or supervised release other than convictions of or involvement in criminal activity;
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> B. up to six months for convictions of misdemeanors or gross misdemeanors;
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> C. six months to expiration of sentence for conviction of a felony; and
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> D. depending on the time remaining to be served on the sentence, the type of violation, and the needs of the offender, up to expiration of the sentence may be assigned as the term of reimprisonment if there is a finding of risk to the public or if repeated violations of the conditions of release occur and the releasee is determined to be unamenable to supervision by the executive officer of hearings and release.

Minn. R. 2940.3800. Minnesota statute adds a further restriction on the term of reimprisonment:

> (a) If the commissioner revokes the supervised release of a person whose release on the current offense has not previously been revoked, the commissioner may order the person to be incarcerated for no more than 90 days or until the expiration of the person's sentence, whichever is less.
>
> (b) This section does not apply to offenders on supervised release for [criminal sexual conduct or criminal sexual predatory conduct].
>
> (c) The commissioner may order a person described in this section to be incarcerated for more than 90 days if the commissioner determines that substantial and compelling reasons exist to believe that the longer incarceration period is necessary to protect the public.

Minn. Stat. § 244.30 (2014).[5]

In this case, Bergeron claims entitlement to habeas relief on the ground that the revocation of his supervised release violates many of the above-identified constitutional, statutory, and regulatory limits. We distill and reorder Bergeron's pro se habeas claims as follows: (1) the timing of Bergeron's preliminary revocation hearing violated Minn. R. 2940.3500, subp. 2; (2) the timing of Bergeron's final revocation hearing violated Minn. R. 2940.3500, subp. 2, and .4200, subp. D; (3) the decision to revoke Bergeron's supervised release was not made by a neutral and detached hearing body, in violation of federal due process; (4) the commissioner failed to specify the period of revocation of Bergeron's supervised release, in violation of Minn. Stat. § 244.05, subd. 2; (5) the commissioner failed to assign Bergeron a release date and a term of reimprisonment, in violation of Minn. R. 2940.3800; (6) the period of revocation of Bergeron's supervised release exceeds 90 days, in violation of Minn. Stat. § 244.30(a); and (7) Bergeron's term of reimprisonment exceeds six months, in violation of Minn. R. 2940.3800, subp. A.

The commissioner responds that Minn. Stat. §§ 244.05, subd. 2, .30, and Minn. R. 2940.3500–.4500 do not apply to the revocation of Bergeron's supervised release, reasoning in part that the commissioner has "the sole authority to personally make decisions regarding whether an offender serving a life sentence is appropriate to release to the community or should remain in prison." As to Minn. Stat. § 244.30, the commissioner

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[5] Section 244.30 "applies to persons whose supervised release is revoked on or after" May 16, 2009, regardless of when they were sentenced or released. 2009 Minn. Laws ch. 83, art. 3, § 15, at 1073–74, 1078.

argues in the alternative that Minn. Stat. § 244.30(c) permits Bergeron's incarceration for more than 90 days because "[t]he record demonstrates that [substantial and compelling] reasons exist." Finally, the commissioner argues generally that the revocation of Bergeron's supervised release meets the requirements of federal due process.

The commissioner persuaded the district court that his discretion to revoke the supervised release of an offender with a life sentence is virtually unfettered by the above-identified statutory and regulatory limits. But we are not persuaded.

The commissioner asserts that "Minn. R. 2940.0400 explicitly provides that the rules in Minn. R. ch. 2940 regarding revocation of parole do not apply to the Commissioner's supervision of inmates serving life sentences." That regulation delegates to the executive officer the commissioner's authority, "under the guidelines prescribed in this chapter," to, among other things, "revoke parole, supervised release, and work release status" of inmates, "with the exception of those inmates under life sentences." Minn. R. 2940.0400 (2015). Minnesota Rule 2940.0400 therefore reserves for the commissioner the sole authority to revoke the supervised release of an offender with a life sentence, but it does not excuse the commissioner from compliance with Minn. R. 2940.3500–.4500 in exercising that authority, "explicitly" or otherwise. Indeed, the commissioner is *required* to "adopt by rule standards and procedures for the revocation of supervised . . . release," Minn. Stat. § 244.05, subd. 2, which is defined to include the release of inmates serving life sentences, Minn. Stat. §§ 244.01, subd. 7, .05, subd. 5.

Similarly, the commissioner insists without citation to authority that Minnesota Statutes section 244.30 "does not apply to offenders serving life sentences, who are subject

to the Commissioner's discretionary parole authority." That statute provides, "If the commissioner revokes the supervised release of a person whose release on the current offense has not previously been revoked, the commissioner may order the person to be incarcerated for no more than 90 days or until the expiration of the person's sentence, whichever is less." Minn. Stat. § 244.30(a). Again, "supervised release" is statutorily defined to include the release of inmates serving life sentences. Minn. Stat. §§ 244.01, subd. 7, .05, subd. 5. And while offenders on supervised release for criminal sexual conduct or criminal sexual predatory conduct are specifically excepted from the statute's reach, Minn. Stat. § 244.30(b), no mention is made of offenders on supervised release from life sentences.

In sum, we see little support for the commissioner's arguments that the above-discussed statutes and regulations do not limit his discretion as to the revocation of supervised release from a life sentence. Neither can we validate, on the record and arguments now before us, the commissioner's apparent practice of treating a life-sentence offender whose supervised release is revoked as though he never received supervised release at all. *See* Minn. R. 2940.1800, subps. 2 (providing that an inmate serving a life sentence is entitled to a "review . . . three years prior to the inmate's parole or supervised release eligibility dates"), 5 (requiring the commissioner to "establish a projected release date . . . or continue the case to a future review date" after any review hearing) (2015).

But Bergeron's brief is void of any argument that the alleged statutory violations result in a jurisdictional defect or a constitutional violation. As to the alleged regulatory violations, Bergeron asserts that "the Minnesota legislature has explicitly stated the rules

are Due Process for Revocation," citing Minn. Stat. § 244.05, subd. 2, and arguing that "[a]ny violation of the rules is then a violation of Due Process." Bergeron is incorrect. While the cited statute directs the commissioner to "adopt by rule standards and procedures for the revocation of supervised or conditional release" and acknowledges that those procedures and standards must "provide due process of law for the inmate," Minn. Stat. § 244.05, subd. 2, the statute does not, and indeed cannot, equate the violation of an adopted procedural rule with the denial of due process. *Cf. Swipies v. Kofka*, 419 F.3d 709, 717 (8th Cir. 2005) ("Violation of a state statutory provision necessarily establishes a procedural due process violation only if the statutory provision requires the same process as federal law, and no more.").

We conclude that Bergeron has failed to establish that any of the alleged statutory and regulatory violations rises to the level of a jurisdictional defect or a constitutional violation. *See Bedell*, 853 N.W.2d at 829 ("The burden is on the petitioner to show the illegality of his detention." (quotation omitted)); *Beaulieu*, 798 N.W.2d at 548 (holding that "a habeas petition must allege either a lack of jurisdiction or a violation of a constitutional right"). We therefore affirm the district court's denial of habeas claims (1), (2), (4), (5), (6), and (7) on that ground. *See State v. Fellegy*, 819 N.W.2d 700, 707 (Minn. App. 2012) ("We may affirm the district court on any ground, including one not relied on by the district court."), *review denied* (Minn. Oct. 16, 2012).

Claim (3), the only remaining habeas claim, alleges violations of Bergeron's federal due-process right to revocation by a neutral and detached hearing body. According to Bergeron, because the commissioner issued the DOC warrant for his arrest, the

commissioner was "Constitutionally . . . barred" from making the decision whether to revoke Bergeron's supervised release. Bergeron also asserts that the final revocation hearing was a "sham," pointing to a statement allegedly made by the commissioner in February 2013 as evidence that the commissioner's "mind [was] made up already" prior to the final hearing. Lastly, Bergeron argues that the commissioner must have been biased, because he revoked Bergeron's supervised release despite Bergeron's attorney's advocacy, Bergeron's supervising agent's recommendations, "the many mitigating factors involved, . . . and the relatively minor nature of the violation."

The record does not indicate who issued the DOC warrant, although Bergeron is correct that only the commissioner had legal authority to issue such a warrant. *See* Minn. R. 2940.0400 (delegating to executive officer commissioner's authority to, among other things, "issue warrants for the apprehension of parolees, supervised releasees, and work releasees," but "with the exception of those inmates under life sentences"). In any event, the issuer of a DOC warrant for a releasee's arrest is not thereby recommending revocation of his release; in fact, the issuer does not need so much as probable cause to believe that the releasee has violated the conditions of his release. *See* Minn. R. 2940.3000 (2015) (providing that "[w]arrants may be issued for the apprehension and detention of parolees, supervised releasees, and work releasees who are . . . *alleged* to have violated the conditions of their release" (emphasis added)). We conclude that, even if the commissioner issued the DOC warrant for Bergeron's arrest, the commissioner was not thereby constitutionally disqualified from later participation in the revocation decision-making process. *See Morrissey*, 408 U.S. at 485–86, 92 S. Ct. at 2602–03 (characterizing as

sufficiently "independent" to satisfy due process a decision-maker "such as a parole officer other than the one who has made the report of parole violations or has recommended revocation").

As to the commissioner's alleged statement in February 2013, the record contains no evidence of such a statement. And the district court found that neither the alleged statement nor the commissioner's ultimate decision to revoke Bergeron's supervised release showed that the commissioner was biased against Bergeron, noting that "[t]he Commissioner was not required to follow the [supervising] agent's recommendations." That finding is entitled to "great weight," *Maiers*, 847 N.W.2d at 527 (quotation omitted), and we uphold it. Accordingly, we conclude that Bergeron did not meet his burden to prove a violation of his due-process right to revocation by a neutral and detached hearing body. *See Bedell*, 853 N.W.2d at 829 ("The burden is on the petitioner to show the illegality of his detention." (quotation omitted)).

Affirmed.