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

STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0775

Michael John Husten, petitioner,
Appellant,

vs.

Tom Roy,
Commissioner of Corrections,
Respondent.

Filed November 27, 2017
Affirmed
Klaphake, Judge*

Washington County District Court
File No. 82-CV-16-5494

Michael John Husten, Stillwater, Minnesota (pro se appellant)

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

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

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

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

KLAPHAKE, Judge

Appellant Michael John Husten challenges the district court's denial of his petition for a writ of habeas corpus. Because there is no evidence in the record that respondent the Minnesota Department of Corrections (DOC) failed to properly administer Husten's sentence or violated Husten's constitutional rights, we affirm.

D E C I S I O N

Avenue for Relief

The state constitution guarantees individuals the right of filing a writ of habeas corpus. Minn. Const. art. I, § 7. The legislature has codified the right, permitting individuals who are "imprisoned or otherwise restrained of liberty" to seek "relief from imprisonment or restraint" by applying for a writ of habeas corpus. Minn. Stat. § 589.01 (2016). A writ of habeas corpus also may be used to challenge conditions of confinement or to raise claims involving fundamental constitutional rights or significant restraints on liberty. *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26-27 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006). We review the district court's findings on a denial of a habeas petition to determine if they are reasonably supported by evidence, but we review questions of law de novo. *Id.* at 26. The petitioner bears the burden of proving unlawful detention. *Bedell v. Roy*, 853 N.W.2d 827, 829 (Minn. App. 2014), *review denied* (Minn. Oct. 28, 2014).

The grounds for a petition for habeas corpus are limited to constitutional issues and jurisdictional challenges. *Id.* In his petition, Husten challenged the DOC's administration

of his 20-year indeterminate sentence.[1] Despite the DOC's assertion otherwise, a habeas corpus petitioner may obtain judicial review of the DOC's implementation of a sentence. *See State v. Schnagl*, 859 N.W.2d 297, 303 (Minn. 2015).

Due Process Violation

Husten's petition for a writ of habeas corpus contained a broad allegation that the DOC violated Husten's due process rights. In 2012, Husten was convicted of second-degree murder for an offense that took place in 1975. Accordingly, Husten was sentenced to an indeterminate sentence of up to 20 years under Minn. Stat. § 609.19 (1974). Although Husten has not provided support for this claim, Husten alleges that DOC documents show that the DOC is applying current, determinate sentencing practices to his sentence, with a mandatory two-thirds of his sentence served in custody and the remaining one-third served in the community. *See* Minn. Stat. § 244.101, subd. 1 (2010). Husten argues that the correct statutory authority for determining parole for his indeterminate sentence is Minn. Stat. § 609.12 (1974), which states that an offender may be paroled "at any time." Husten alleges that the DOC's "incorrect" calculation of his incarceration resulted in a denial of his right to due process.

When engaging in a due process analysis, this court conducts a two-step inquiry. *Carrillo v. Fabian*, 701 N.W.2d 763, 768 (Minn. 2005). "First, the court must determine

[1] Husten's appellate brief and attachments included additional claims for relief and materials that were not in the district court record. We decline to consider any issues not considered by the district court, nor materials not part of the district court record. *See Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988); *see also* Minn. R. Civ. App. P. 110.01.

whether the complainant has a liberty or property interest with which the state has interfered. Second, if the court finds a deprivation of such an interest, it must determine whether the procedures attendant upon that deprivation were constitutionally sufficient." *Id.* (citation omitted).

Husten has failed to show that he has a constitutionally protected liberty interest in being released from prison before the full expiration of his sentence. A liberty interest may derive from the federal constitution itself or from a state law or policy. *Wilkinson v. Austin*, 545 U.S. 209, 221, 125 S. Ct. 2384, 2393 (2005). "There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence." *Greenholtz v. Inmates of Neb. Penal and Corr. Complex*, 442 U.S. 1, 7, 99 S. Ct. 2100, 2104 (1979). Accordingly, the federal constitution does not allow Husten a protected liberty interest in a particular release date.

A liberty interest based on state law must "arise[] from a legitimate claim of entitlement rather than simply an abstract need or desire or a unilateral expectation." *Carillo*, 701 N.W.2d at 768. Minnesota Statute Section 609.12 (1974) provides that a person sentenced for an indeterminate sentence may be paroled at any time, when "in the judgment of the Minnesota corrections authority… would be most conducive to his rehabilitation and would be in the public interest." However, "the concept of constitutionally protected liberty… does not include statutorily created relief that is subject to the unfettered discretion of a governmental authority." *Nativi-Gomez v. Ashcroft*, 344 F.3d 805, 809 (8th Cir. 2003).

Under Minn. Stat. § 244.08, subd. 1 (2016), the commissioner has full discretion to make decisions for inmates with indeterminate sentences. The statute provides that the commissioner retains all powers and duties: to determine parole for inmates sentenced on or before April 30, 1980. *Id.* As the district court noted, Husten may seek parole through procedures established by the DOC, but has not yet done so. Because Husten has failed to show a protected liberty interest under either the federal constitution or state law, he cannot establish a prima facie case that his due process rights have been violated.

Ex Post Facto Clause

"Both the United States and Minnesota Constitutions prohibit the enactment of ex post facto laws." *State v. Manning,* 532 N.W.2d 244, 247 (Minn. App. 1995), *review denied* (Minn. July 20, 1995). "The ex post facto prohibition forbids the Congress and the States [from] enact[ing] any law which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed." *Weaver v. Graham*, 450 U.S. 24, 28, 101 S. Ct. 960, 964 (1981) (quotation omitted) .

Husten argues that his sentence is "being formally and unconstitutionally applied and computed, in violation of the ex post facto doctrine." Husten believes that the DOC's "incorrect" calculation of his incarceration has resulted in a retroactive enhancement of his punishment. It is undisputed that Husten was properly sentenced to a 20-year indeterminate sentence. This sentence was authorized under the statute that applied to him when he committed the second-degree murder in 1975. Minn. Stat § 609.19. Husten argues that under Minn. Stat. § 609.12, he may be paroled "at any time." But that statute

grants the commissioner full authority to make parole determinations. *Id., see also* Minn. Stat. § 243.05, subd. 1(g) (2010). The DOC is not imposing a punishment for an act that was not punishable when it was committed, and is not imposing punishment in addition to what was prescribed by the law at that time. The DOC is therefore acting within its discretion to administer Husten's sentence according to Minnesota law.

Affirmed.