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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0813**

David Richard Carlson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed November 19, 2018
Affirmed
Connolly, Judge**

St. Louis County District Court
File No. 69DU-CR-05-2261

David R. Carlson, Duluth, Minnesota (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Gary W. Bjorklund, Assistant County Attorney,
Duluth, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant, pro se, challenges the district court's denial of appellant's request to correct his sentence, arguing that the conditional release term is unconstitutional and that his incarceration was erroneously extended for 45 days. Because the district court correctly concluded that it is not the proper forum in which to challenge the revocation of supervised-release status and because this court has previously determined that a term of conditional release violates neither due process nor double jeopardy, we affirm.

FACTS

In 2004, appellant David Richard Carlson approached S.M.C., then 13, with whom he was acquainted, and offered her a ride home, which she accepted. He drove her to a deserted area, forced her to perform fellatio on him, gave her \$45, and dropped her off near her home. After she reported the incident to her school liaison officer, appellant was charged with one count of first-degree criminal sexual conduct, two counts of third-degree criminal sexual conduct, one count of soliciting a child to engage in sexual conduct, and one count of terroristic threats. Following a jury trial, he was acquitted of the terroristic-threats charge and convicted of the four criminal-sexual-conduct charges. The district court subsequently acquitted him of first-degree criminal sexual conduct; the state appealed, and his acquittal was reversed. *State v. Carlson*, No. A06-0961 (Minn. App. Apr. 10, 2007) (reversing the acquittal), *review denied* (Minn. June 27, 2007) (*Carlson I*).

In 2007 appellant was sentenced to 144 months in prison with a ten-year conditional-release term. He appealed, and his conviction was affirmed. *State v. Carlson*,

No. A07-2144 (Minn. App. Feb. 10, 2009) (affirming appellant’s conviction), *review denied* (Minn. Apr. 29, 2009) (*Carlson II*). The district court later reduced the conditional-release term to five years because of the law in effect at the time of appellant’s offense.

Appellant subsequently filed numerous petitions for postconviction relief, which have all been denied, and the denials have been affirmed on appeal. *See, e.g., Carlson v. State*, No. A17-1152 (Minn. App. Feb. 2, 2018), *review denied* (Minn. Mar. 20, 2018) (order op.) (*Carlson VII*); *Carlson v. State*, No. A15-1388, 2016 WL 1397206 (Minn. App. Apr. 11, 2016), *review denied*, (Minn. July 19, 2016) (*Carlson VI*); *Carlson v. State*, No. A13-1391 (Minn. App. Mar. 31, 2014), *review denied* (Minn. May 28, 2014) (*Carlson V*); *Carlson v. State*, No. A12-0394 (Minn. App. Nov. 13, 2012), *review denied* (Minn. Jan. 15, 2013) (*Carlson IV*); and *Carlson v. State*, No. A09-1558 (Minn. App. Jan. 25, 2010) (order op.), *review denied* (Minn. Apr. 20, 2010) (*Carlson III*).

He now challenges the denial without a hearing of another petition for postconviction relief and argues that the conditional-release term of his sentence violates his due-process and double-jeopardy rights.¹

D E C I S I O N

1. Denial of petition

The district court found that appellant “appears to seek a correction of sentence . . . claiming a constitutional violation related to conditional release” and that he “claims he

¹ Appellant also argues that his conviction should be overturned, but provides neither support for this argument nor an explanation of why this court should again address that issue.

served an additional 45 days of confinement due to an alleged refusal of treatment.” The district court concluded that appellant was asking it to address an administrative decision made by the Department of Corrections, which is outside a district court’s jurisdiction. This is not the first time appellant has made such a request. *See Carlson VI*, 2016 WL 1397206, at *3 (noting that “the district court is not the proper forum to challenge the revocation of [appellant’s] supervised-release status because it is an administrative decision under the purview of the Minnesota Department of Corrections” and “parole revocation is not within the district court’s original jurisdiction”).

The district court did not abuse its discretion in denying appellant’s petition without a hearing.

2. Violations of double jeopardy and due process

Whether the government has violated procedural due-process rights is a question of law that an appellate court reviews de novo. *State v. Rey*, 905 N.W.2d 490, 495 (Minn. 2018). This court reviews double-jeopardy claims de novo. *State v. Leroy*, 604 N.W.2d 75, 77 (Minn. 1999).

A term of conditional release has been held to violate neither due process nor double jeopardy. *Maiers v. Roy*, 847 N.W.2d 524, 530-31 (Minn. App. 2014), *review denied* (Minn. Aug. 19, 2014). *Maiers* involved a sentence with a statutory maximum of seven years and, like appellant’s sentence, a mandatory five-year conditional-release term. *Id.* “The five-year conditional-release term is a mandatory aspect of the sentence to be imposed by the district court. Therefore, the maximum sentence for appellant’s offense is seven

years plus the term of conditional release. We conclude that appellant's sentence does not violate due process guarantees." *Id.* at 531 (quotation and citation omitted).

Maiers also rejects appellant's argument that "[the] conditional-release term constitutes a second punishment for a single . . . offense." *Id.* At the time of appellant's offense, Minn. Stat. § 609.3455, subd. 6 (2004), provided a mandatory conditional-release term of five years. "When the punishment imposed is mandatory at the time of sentencing, there is no double-jeopardy violation. Moreover, an imposition of a conditional-release term does not violate the Double Jeopardy Clause." *Id.* (citations omitted).

Appellant was not entitled to a hearing or to postconviction relief, and the conditional-release term does not violate double jeopardy or due process.

Affirmed.