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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0733**

Joseph Bergeron, petitioner,
Appellant,

vs.

Commissioner of Corrections, Tom Roy, et al.,
Respondents.

**Filed January 14, 2019
Affirmed
Johnson, Judge**

Washington County District Court
File No. 82-CV-17-5365

Joseph Bergeron, Stillwater, Minnesota (pro se appellant)

Keith M. Ellison, Attorney General, Rachel Bell, Kelly Kemp, Assistant Attorneys General, St. Paul, Minnesota (for respondents)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and John P. Smith, Judge.*

UNPUBLISHED OPINION

JOHNSON, Judge

Joseph Bergeron is serving a life sentence at the Stillwater correctional facility for a 1988 murder in Hennepin County. In December 2017, he petitioned the Washington

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

County District Court for a writ of mandamus that would require the commissioner of corrections to release him from prison and place him on supervised release. The district court dismissed the petition. We affirm.

FACTS

Before describing the procedural history of this particular case, we will briefly review the history of Bergeron's crime and his incarceration.

In September 1988, Bergeron burglarized a man's home in Minneapolis and stabbed him with a knife eight times, causing him to bleed to death. After a jury found him guilty of first-degree murder while committing or attempting to commit burglary, the district court imposed a mandatory life sentence. *See* Minn. Stat. § 609.185(3) (1988). The supreme court affirmed. *See State v. Bergeron*, 452 N.W.2d 918 (Minn. 1990) (*Bergeron I*).

In February 2011, the commissioner of corrections placed Bergeron on intensive supervised release, with conditions. Bergeron was eligible for supervised release because he had been imprisoned for more than 17 years. *See* Minn. Stat. § 244.05, subds. 4, 5 (1988). Bergeron violated the terms of his supervised release in 2011 and 2012. After each violation, the commissioner continued his supervised release with restructured terms, including a requirement that he not use or possess alcohol.

In October 2014, Bergeron was charged in Hennepin County with driving while impaired, fleeing a peace officer, and obstructing legal process. In December 2014, the commissioner revoked Bergeron's supervised release.

In October 2015, Bergeron petitioned the Washington County District Court for a writ of habeas corpus. He claimed that he was being unlawfully detained on the ground that his life sentence had expired after 25 years. The district court dismissed his petition, stating that his “life sentence is still in effect and he remains under the control of the Commissioner of Corrections” and that “the Commissioner of Corrections had the authority to rescind his parole upon violation of the conditions of release.” *Bergeron v. Roy*, No. A16-0351, 2016 WL 4421554, at *2 (Minn. App. Aug. 22, 2016) (*Bergeron II*). This court affirmed. *Id.* at 3.

In June 2016, Bergeron again petitioned the Washington County District Court for a writ of habeas corpus. Bergeron asserted multiple claims, including a claim that “the period of revocation of [his] supervised release exceeds 90 days, in violation of Minn. Stat. § 244.30(a).” *Bergeron v. Roy*, No. A16-1999, 2017 WL 2920297, at *4 (Minn. App. July 10, 2017) (*Bergeron III*), *review denied* (Minn. Aug. 30, 2017), *cert. denied*, 138 S. Ct. 1007 (2018). The district court dismissed the petition on the ground that the commissioner had not violated any of Bergeron’s “statutory or due process rights.” This court affirmed on the grounds that Bergeron had “failed to establish that any of the alleged statutory and regulatory violations rises to the level of a jurisdictional defect or a constitutional violation” and that he could not demonstrate a violation of his due-process rights. *Id.* at *6-7.

With that background in mind, we turn to this case. In December 2017, Bergeron petitioned the Washington County District Court for a writ of mandamus (not a writ of habeas corpus). In his *pro se* petition, he claimed that the commissioner has a nondiscretionary duty to release him from prison, and he sought a writ of mandamus to

compel the commissioner to release him. He argued to the district court that “[a]ll of the legal issues” were “decided against” the commissioner in this court’s 2017 opinion. In April 2018, the district court dismissed Bergeron’s petition. The district court reasoned that Bergeron had an alternative remedy in the habeas corpus statute, that the *Bergeron III* opinion had *not* concluded that he was entitled to release, and that the commissioner had determined that Bergeron’s incarceration is necessary for the sake of public safety. Bergeron appeals.

D E C I S I O N

Bergeron argues that the district court erred by dismissing his petition for a writ of mandamus.

A writ of mandamus “may be issued to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.” Minn. Stat. § 586.01 (2018). The writ of mandamus is an extraordinary legal remedy. *State v. Pero*, 590 N.W.2d 319, 323 (Minn. 1999). To obtain a writ of mandamus, a petitioner must show that three conditions are present: (1) the respondent has failed to perform an official duty that is clearly imposed by law; (2) the official’s failure to perform the official duty has caused injury to the petitioner; and (3) there is no other adequate legal remedy. *Breza v. City of Minnetrista*, 725 N.W.2d 106, 109-10 (Minn. 2006). “Mandamus may issue against a public officer only to compel a ministerial act and not when the official has discretion with respect to the act in question.” *Duncan v. Roy*, 830 N.W.2d 48, 51 (Minn. App. 2013), *review denied* (Minn. July 16, 2013) (quotation omitted). A writ of mandamus may not issue to direct how an official

duty must be performed or how discretion must be exercised. *See State v. Davis*, 592 N.W.2d 457, 459 (Minn. 1999); *State ex rel. Spurck v. Civil Serv. Bd.*, 42 N.W.2d 729, 730 (Minn. 1950). A district court’s grant of mandamus is only for the “rare cases that the officials act in so clearly an arbitrary and capricious a manner that their action may be reviewed on mandamus.” *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 176 (Minn. 2006) (quotation omitted).

The petitioner in a mandamus action bears the burden of demonstrating “every material fact necessary to show the existence of the plain duty to act with respect to the relief sought.” *Id.* at 179; *see also Ebenezer Soc’y v. Minn. State Bd. of Health*, 223 N.W.2d 385, 388 (Minn. 1974). This court applies a *de novo* standard of review to a district court’s denial of a petition for a writ of mandamus if the decision is “based solely on a legal determination.” *Breza*, 725 N.W.2d at 110.

In this case, Bergeron contends that the commissioner has failed to perform an official duty arising from the following statute:

(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 a violation of section 609.342, 609.343, 609.344, 609.345, 609.3451, or 609.3453.

(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 (2018). Bergeron specifically contends that the commissioner has held him in incarceration for more than 90 days, in violation of paragraph (a).

In response, the commissioner presents several arguments. The commissioner first argues that section 244.30 does not apply to a prisoner such as Bergeron, who was sentenced to life in prison. The commissioner argues that supervised release for a prisoner with a life sentence is governed by section 244.05. The commissioner's first argument is somewhat in tension with this court's 2017 opinion, in which we questioned similar arguments but ultimately did not resolve them. *See Bergeron III*, at *5. Bergeron contends that our 2017 opinion is "binding" in this case. Our 2017 opinion is an unpublished opinion, which means that it is not binding precedent. *See* Minn. Stat. § 480A.08, subd. 3(c) (2018); *Vlahos v. R & I Constr., Inc.*, 676 N.W.2d 672, 676 n.3 (Minn. 2004); *State v. Porte*, 832 N.W.2d 303, 312 n.1 (Minn. App. 2013). But the opinion was issued in a case with the same parties as the parties in this case, which gives rise to the possibility that the commissioner's first argument is precluded by the doctrine of collateral estoppel. *See State v. Lemmer*, 736 N.W.2d 650, 658-64 (Minn. 2007); *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837-40 (Minn. 2004); *Haavisto v. Perpich*, 520 N.W.2d 727, 731-32 (Minn. 1994). The commissioner recognizes this possibility and makes an alternative argument that the collateral-estoppel doctrine does not apply. The commissioner also argues in the alternative that, even if section 244.30 applies, Bergeron has not demonstrated a right to relief because the commissioner has made the determination described in paragraph (c),

which justifies Bergeron's incarceration beyond the 90-day period specified in paragraph (a).

We need not address all of the issues raised in the parties' briefs. Bergeron's petition is based on one legal theory: that the commissioner has failed to comply with the requirements of paragraph (a) of section 244.30. Assuming without deciding that section 244.30 applies to Bergeron, it naturally follows that all paragraphs of section 244.30 would apply. Accordingly, Bergeron would be entitled to relief on his chosen legal theory only if the commissioner had not complied with paragraph (c) of section 244.30.

The commissioner has reviewed Bergeron's life sentence on three occasions since the revocation of his supervised release. In January 2015, the commissioner informed Bergeron by letter that he would remain in prison for another year, at which time his sentence would be reviewed again. The commissioner wrote that Bergeron had engaged in deceptive behavior and had "not taken ownership of [his] behavior." The commissioner also wrote that his decision to continue the review was based in part on a concern for "public safety."

In January 2016, the commissioner informed Bergeron by letter that the review of his life sentence would be continued for two more years. The commissioner wrote, "This decision reflects our concern for public safety interests due to the fact that you continue to demonstrate a lack of personal responsibility for your behavior while on community supervision and subsequent return to custody following your revocation of supervision."

In January 2018, the commissioner informed Bergeron by letter that the review of his life sentence would be continued again for two more years. The commissioner wrote,

“I must be confident that the release [of any person to community supervision] will not jeopardize public safety.” The commissioner also wrote, “Because of your continued refusal to cooperate with the review process and to address your chemical use/abuse, I have concluded that continuing your incarceration is necessary to protect the public.”

The commissioner’s decisions in 2015, 2016, and 2018 that Bergeron would remain in prison were expressly based on the commissioner’s concerns about public safety. In each letter to Bergeron, the commissioner identified reasons for his decision that are “substantial and compelling.” *See* Minn. Stat. § 244.30(c). Thus, the commissioner has satisfied the requirements of paragraph (c) of section 244.30. Assuming without deciding that section 244.30 applies to Bergeron, he is not entitled to relief under paragraph (a) because the commissioner has complied with paragraph (c). In light of that conclusion, we need not address the commissioner’s other arguments for affirmance of the district court’s decision.

In sum, the district court did not err by dismissing Bergeron’s petition for a writ of mandamus.

Affirmed.