STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0529

Rodney Thundercloud,
Appellant,

vs.

Jodi Harpstead, Commissioner of Department of Human Services, et al.,
Defendants,

and

Paul Schnell, Commissioner of Department of Corrections,
Respondent.

Filed October 28, 2019
Reversed and remanded
Slieter, Judge

Carlton County District Court
File No. 09-CV-18-1425

Rodney Thundercloud, Moose Lake, Minnesota (*pro se* appellant)

Keith Ellison, Attorney General, Kelly S. Kemp, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Ross, Judge; and Slieter, Judge.

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

SLIETER, Judge

In this appeal from the denial of a petition for a writ of *habeas corpus*, appellant argues that the Minnesota Department of Corrections (DOC) erred in calculating his

conditional-release term, violated his due-process rights, and violated the prohibition against *ex post facto* laws. Appellant also argues that the district court erred in not holding an evidentiary hearing on the merits of his petition. Because we resolve this matter solely on the improper calculation of appellant's conditional release term, we decline to address the other issues raised by appellant.

The DOC's calculation of the duration of appellant's conditional release was based on a statute not enacted at the time of appellant's offense. Once the correct conditional-release statute is applied, it becomes evident that appellant has completed his conditional release, and his petition for writ of *habeas corpus* should have been granted. We reverse and remand.

FACTS

In 1993, appellant entered a guilty plea in Hennepin County to one count of second-degree criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 1(a) (1992). The district court sentenced appellant to 240 months' imprisonment under the patterned sex-offender statute based upon two prior criminal-sexual-conduct offenses. Though appellant was subject to a conditional-release term at the time of his sentence, the sentencing court neglected to impose it. *Thundercloud v. State*, No. A14-1680, 2015 WL 1609011, at *1 (Minn. App. April 13, 2015), *review denied* (Minn. June 16, 2015).

In 2000, the DOC sent the district court a letter asking whether appellant was subject to a ten-year conditional-release term. The district court responded by issuing an order imposing a ten-year conditional-release period "minus the time [appellant] has served on supervised release."

While appellant was serving his sentence, the state civilly committed him as a sexually dangerous person and sexually psychopathic personality. Subsequently, appellant's supervised release was revoked twice, and appellant served the remainder of his sentence in prison.

In March 2013, after appellant completed his prison and supervised-release term while under indefinite civil commitment, the DOC sent him a letter informing him "that adjustments have been made to your governing sentence resulting in a change to your Conditional Release Expiration date." The letter explained that the DOC previously ran appellant's conditional release concurrently with his supervised release but the DOC interpreted a recent court of appeals decision, *State ex. rel. Peterson v. Fabian*, 784 N.W.2d 843, 847 (Minn. App. 2010), as holding that conditional-release terms must be served consecutively to supervised-release terms. The DOC recalculated his ten-year conditional release term as ending on March 13, 2021, after accounting for the 676 days he was on supervised release.

On August 1, 2018, appellant petitioned for writ of *habeas corpus* in Carlton County, arguing that the DOC erroneously calculated his conditional-release term. The district court denied his petition without a hearing.

D E C I S I O N

On review of a petition for a writ of *habeas corpus*, "[t]he district court's findings in support of a denial . . . are entitled to great weight and will be upheld if reasonably supported by the evidence." *Aziz v. Fabian*, 791 N.W.2d 567, 569 (Minn. App. 2010). "Questions of law, however, are subject to de novo review." *Id.*

Appellant argues the district court erred in concluding that the DOC properly recalculated his sentence. We agree.

Appellant committed his offense on January 17, 1993, and under the law in effect at the time, was subject to a conditional-release term of "the remainder of the statutory maximum period or for ten years, *whichever is longer*." Minn. Stat. § 609.1352, subd. 5 (1992) (emphasis added). At that time, appellant was also entitled to earn "good time." *See* Minn. Stat. § 244.04, subd., 1 (1992) ("[T]he term of imprisonment of any inmate . . . whose crime was committed before August 1, 1993, shall be reduced in duration by one day for each two days during which the inmate violates none of the disciplinary offense rules . . . ."). Because appellant was sentenced under the good-time system, his conditional-release term begins after appellant "has completed the sentence imposed, less any good time." Minn. Stat. § 609.1352, subd. 5. This provision is in contrast to the statute in place at the time of the *Peterson* decision referenced in the DOC's letter to appellant and results in a conditional-release period not commencing until the entire sentence—including the supervised-release period—has been served.[1] In summary, applying the statutes in effect

[1] The DOC also improperly applied *Peterson* to Thundercloud's sentence and, in doing so, incorrectly ran his conditional-release and supervised-release terms consecutively. *See* 784 N.W.2d at 846. *Peterson* dealt with a conditional-release term under Minn. Stat. § 243.166, subd. 5a (2008)—pursuant to this statute, a defendant's conditional-release term starts after the defendant's imprisonment and supervised release. *Id.* Thundercloud was not sentenced pursuant to this statute, and *Peterson* does not apply to his sentence because his conditional-release term begins when he is *released* from prison. *See Maiers v. Roy*, 847 N.W.2d 524, 529-30 (Minn. App. 2014) (refusing to apply *Peterson* to the DWI conditional-release statute), *review denied* (Minn. Aug. 19, 2014).

at the time of his offense, appellant's conditional-release term began when he was released from prison after having earned good time.

To properly calculate the duration of the conditional-release period for appellant requires a determination of whether "the remainder of the statutory maximum period or ten years" is longer. Minn. Stat. § 609.1352, subd. 5. In appellant's case, the statutory maximum period remaining after his release from prison was longer and, hence, constitutes the conditional-release period. Appellant was released from prison in 2006. A ten-year conditional-release term would have put the end of his conditional-release term in 2016. The statutory maximum sentence of appellant's offense, however, is 25 years, Minn. Stat. § 609.343, subd. 2 (defining penalties for second-degree criminal sexual conduct). A conditional-release term consisting of the remainder of appellant's statutory maximum sentence put the end of his conditional-release term in 2018. Thus appellant should have received a conditional-release term of the remainder of the statutory maximum period, and this conditional-release term would have ended in 2018. The DOC therefore miscalculated appellant's sentence, which has now been fully served.

In sum, the district court erred in concluding the DOC properly calculated appellant's sentence. We therefore reverse and remand for the district court to grant appellant's writ of *habeas corpus*.

Reversed and remanded.