STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0180

Jerry Duwenhoegger,
Appellant,

vs.

Paul Schnell,
Respondent.

Filed July 27, 2020
Affirmed
Rodenberg, Judge

Washington County District Court
File No. 82-CV-19-4459

Jerry Duwenhoegger, Bayport, Minnesota (pro se appellant)

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

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

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

RODENBERG, Judge

Appellant Jerry Duwenhoegger appeals from the district court's order denying his petition for a writ of habeas corpus. Appellant argues that the district court should have granted his petition because the Minnesota Department of Corrections (DOC) is illegally extending his incarceration for prison discipline. We affirm.

FACTS

On April 26, 1999, appellant was sentenced to consecutive sentences of 190 months and 180 months in prison after he was convicted of two counts of conspiracy to commit first-degree murder. Both offenses were committed in 1998.

Appellant has been involved in numerous legal proceedings during his incarceration. *Duwenhoegger v. King*, 561 F. App'x 581 (8th Cir. 2014) (affirming a summary judgment dismissing appellant's 42 U.S.C. § 1983 action); *Duwenhoegger v. King*, No. 10-3965, 2013 WL 646317 (D. Minn. Feb. 21, 2013) (order adopting the magistrate judge's report and recommendation that defendants' motion for summary judgment be granted and plaintiff's third amended complaint be dismissed with prejudice); *Duwenhoegger v. King*, No. 10-3965, 2013 WL 646235 (D. Minn. Jan. 28, 2013) (recommending defendants' motion for summary judgment be granted and appellant's third amended complaint be dismissed with prejudice); *Duwenhoegger v. King*, No. 10-3965, 2012 WL 1529300 (D. Minn. Apr. 30, 2012) (order denying appellant's motion for a restraining order, two protective orders, and declaratory judgment); *Duwenhoegger v. King*, No. 10-3965, 2012 WL 1516865 (D. Minn. Feb. 13, 2012) (recommending denial of appellant's motion for a restraining order, two protective orders, and declaratory judgment); *State v. Duwenhoegger*, No. C5-99-1237, 2000 WL 821483 (Minn. App. June 27, 2000) (affirming appellant's 1999 conviction).

On August 12, 2019, appellant petitioned the district court for a writ of habeas corpus. In his petition, appellant alleged that the DOC "retaliated with malice aforethought, bias, prejudice, persecution, and cruelly and unusually punished [appellant]

with 363 days of illegal and unconstitutional extended incarceration." Appellant alleged that the DOC's retaliation was motivated by appellant's claim to be a sovereign citizen. Appellant claimed that he was "repeatedly accused . . . of filing and threatening to file 'false and fraudulent UCC liens' against staff'" and that he was "cruelly and unusually punished . . . using MN D.O.C. policy #301.030." DOC policy 301.030 classifies certain Uniform Commercial Code (UCC) materials as contraband. In his habeas petition, appellant cites one specific instance of a 2010 reprimand when appellant was accused of threatening to file a UCC lien against the DOC law librarian shortly after the librarian "withheld some of [appellant]'s legal documents for review." Appellant also alleged that the DOC violated his rights to due process, his Eighth Amendment right to be free from cruel and unusual punishment, and his right to restoration of "good time" under Minn. Stat. § 244.04 (2018).

On November 13, 2019, the district court ordered that the DOC respond to appellant's petition. On December 12, 2019, the DOC filed its memorandum opposing appellant's petition. The DOC argued:

> [Appellant]'s challenges to the extended incarceration he has received since 2007 are either barred by res judicata, fail to state a prima facie case for relief, or fail as a matter of law and in light of official records, which patently contradict his bare assertions that he was sanctioned with extended incarceration for actually filing false liens, that his discipline was imposed in retaliation for his exercise of any constitutional right, and that he was denied due process during his disciplinary proceedings.

The DOC argued that appellant's previous federal lawsuit challenging the DOC's "prohibition on the possession of UCC-related materials and the discipline [appellant]

received between 2007 and 2010" precludes revisiting the issues resolved in that earlier case.

On January 8, 2020, the district court denied appellant's petition for habeas corpus and dismissed the petition with prejudice. First, the district court determined that an evidentiary hearing was not warranted because appellant "failed to state a prima facie case for habeas relief," "no disputed issues of material fact exist," and "the issues raised by [appellant] can be decided as a matter of law." Second, the district court concluded that several of appellant's challenges to the DOC's contraband policy and disciplinary decisions were barred by res judicata because of a prior federal lawsuit in which summary judgment was granted to the DOC on the same or similar allegations by appellant. Third, the district court found that appellant's remaining claims for retaliation, denial of due process, and cruel and unusual punishment failed for failure to state a prima facie case for relief and/or "as a matter of law and in light of official records . . . which contradict many of the bare and conclusory allegations in his petition."

This appeal followed.[1]

D E C I S I O N

Appellant argues that the district court erred by denying his habeas request because he was "cruelly and unusually, illegally and unconstitutionally punished" when the DOC extended his incarceration for prison discipline.

[1] After filing his appeal, appellant moved to disqualify the Office of the Attorney General from representing respondent. We denied appellant's motion because no basis for disqualification exists.

In the main, appellant's briefing consists of sweeping generalizations and legal assertions that have no support in any legal authority. To the extent that his arguments concern his status as a sovereign citizen as entitling him to special privileges not available to others, these sorts of arguments have been observed to have "no conceivable validity in American law." *United States v. Schneider*, 910 F.2d 1569, 1570 (7th Cir. 1990). Most of appellant's briefing is unsupported by comprehensible legal citation or analysis, and the authorities he does cite almost uniformly fail to support his arguments.

Arguments are deemed waived when a "brief contains no argument or citation to legal authority in support of the allegations." *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002). Despite the insufficiency of appellant's briefing, we have done our best to understand and analyze appellant's arguments on their meager merits.

"A person imprisoned . . . may apply for a writ of habeas corpus to obtain relief from imprisonment or restraint." Minn. Stat. § 589.01 (2018). "A writ of habeas corpus may also be used to raise claims involving fundamental constitutional rights and significant restraints on a defendant's liberty or to challenge the conditions of confinement." *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26-27 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006). "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." *Aziz v. Fabian*, 791 N.W.2d 567, 569 (Minn. App. 2010). Questions of law pertaining to a habeas petition are subject to de novo review. *Id.*

We interpret appellant's brief as challenging each of the district court's legal determinations denying him relief.

I. Res judicata bars appellant's claims concerning pre-2011 discipline.

Appellant previously filed an action in federal court under 42 U.S.C. § 1983 in which summary judgment was granted against appellant and in favor of respondent's predecessor. *See Duwenhoegger*, 561 F. App'x at 581 (affirming an adverse grant of summary judgment in appellant's 42 U.S.C. § 1983 action); *Duwenhoegger*, 2013 WL 646317, at *1 (order adopting the magistrate judge's report and recommendation that defendants' motion for summary judgment be granted and appellant's third amended complaint in that action be dismissed with prejudice); *Duwenhoegger*, 2013 WL 646235, at *32 (recommending defendants' motion for summary judgment be granted and appellant's third amended complaint be dismissed with prejudice).

Appellant argues that the district court erred when it applied res judicata to his habeas claims. Appellant contends that "[n]o part of the previous action had anything to do with petitioning for the dismissal of the cruel and unusual, illegal and unconstitutional extended incarceration." Appellant also argues that "[t]he final judgment on the lawsuit was not an adjudication on the merits of the Habeas Corpus which is an action seeking an absolutely different form of relief in the Law and cannot be incorporated as part of the former civil lawsuit."

The district court did not apply res judicata to all of appellant's habeas claims. In denying appellant's petition, the district court concluded that appellant's "challenges to the DOC's contraband policy and his claims about those 226 days of extended incarceration [that appellant challenged in federal court] are barred by res judicata, because [of the

earlier] federal lawsuit, which resulted in a grant of summary judgment for the DOC defendants."

Res judicata bars a subsequent claim when "(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; (4) the estopped party had a full and fair opportunity to litigate the matter." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004). "All four prongs must be met for res judicata to apply." *Id.* "Res judicata applies equally to claims actually litigated and to claims that could have been litigated in the earlier action." *Brown-Wilbert, Inc. v. Copeland Buhl & Co.*, 732 N.W.2d 209, 220 (Minn. 2007). "We review the application of res judicata de novo." *Rucker v. Schmidt*, 794 N.W.2d 114, 117 (Minn. 2011).

Under the first element, the earlier claim must have involved the same set of factual circumstances as the later claim. *Hauschildt*, 686 N.W.2d at 840. Two claims involve the same set of factual circumstances if "the same evidence will sustain both actions." *McMenomy v. Ryden*, 148 N.W.2d 804, 807 (Minn. 1967). Appellant's federal lawsuit challenged his extended incarceration, his possession of UCC materials, and claimed retaliation against him for his status as a sovereign citizen for the period of time from 2006 through 2011. *Duwenhoegger*, 2013 WL 646235, at *1. To the extent that appellant now challenges the DOC's imposition of discipline during the relevant time period, the same set of factual circumstances are involved in both this case and the earlier federal litigation. For example, one of appellant's claims of unlawful incarceration in his federal lawsuit

specifically related to the law librarian, as does his current habeas petition. *Id.* at *4. This element is satisfied.

Under the second element, both claims must involve the same parties or their privies in order to have preclusive effect. *Hauschildt*, 686 N.W.2d at 840. "[C]ourts will find persons in privity with another party when (1) they control an action despite not being named a party to it, (2) a party represents their interests in an action, or (3) they are successors in interest to persons with derivative claims." *Ward v. El Rancho Manana, Inc.*, __ N.W.2d __, __, 2020 WL 2517082, at *5 (Minn. App. May 18, 2020). Appellant's federal lawsuit was brought against many MNDOC employees in their official capacities. *Duwenhoegger*, 2013 WL 646235, at *1. This included then-DOC Commissioner Joan Fabian. *Duwenhoegger*, 561 F. App'x at 581. Appellant's habeas petition named the current DOC Commissioner as a respondent and alleged claims against him in his official capacity. This element is satisfied.

Under the third element, there must have been a final judgment on the merits in the earlier claim in order for it to have preclusive effect. *Hauschildt*, 686 N.W.2d at 840. "A final judgment ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *T.A. Schifsky & Sons, Inc. v. Bahr. Constr., LLC*, 773 N.W.2d 783, 788 (Minn. 2009) (quotation omitted). The federal district court granted, and the Eighth Circuit Court of Appeals affirmed, the DOC employees' motion for summary judgment and dismissed appellant's complaint in its entirety with prejudice. *Duwenhoegger*, 561 F. App'x 581; *Duwenhoegger*, 2013 WL 646317. A dismissal with prejudice is a final

judgment. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 583 (Minn. 2010). This element is satisfied.

Under the fourth element, appellant must have had a full and fair opportunity to litigate the earlier claims. *Hauschildt*, 686 N.W.2d at 840. Appellant's federal lawsuit has a lengthy history and included at least three amended complaints. *Duwenhoegger*, 2013 WL 646235, at *1. The federal court "poured over [appellant's] epistle ad nauseam" and addressed appellant's "several recurring challenges." *Id.* Appellant certainly had a full and fair opportunity to litigate in federal court the same claims he now brings in his habeas petition for periods of time before 2011. This element is satisfied.

The district court did not err in applying res judicata to appellant's habeas petition to bar appellant from relitigating his challenge to discipline imposed by the MNDOC before 2011.

Because res judicata bars only appellant's arguments concerning his pre-2011 discipline, we address the balance of appellant's post-2011 arguments on the merits and without regard to any preclusive effect of the earlier litigation.

II. Appellant's retaliation claim fails.

In his petition, appellant alleged that the DOC "accused [him] of violating a MN D.O.C. discipline rule due to the FACT that [appellant] filed his [Sovereign/American] Nationality in accordance to STATE, Federal and International authorities." Appellant generally cites allegations concerning the filing of UCC liens, but provides specific allegations concerning an incident of discipline involving the law librarian. Appellant

alleges that he was "exercising [his] God-given and Constitutionally secured and protected rights" and that he committed no misconduct.

The district court determined that appellant's "retaliation claim . . . fails as a matter of law, because his official disciplinary records show that his extended incarceration was imposed for actually violating prison rules, including the prohibition on possessing UCC-related materials, and that the hearing officers' decisions were supported by at least some evidence." The district court also found appellant's assertions of sovereign nationality to be "legally frivolous."

"A prima facie case of retaliatory discipline requires a showing that: (1) the prisoner exercised a constitutionally protected right; (2) prison officials disciplined the prisoner; and (3) exercising the right was the motivation for the discipline." *Meuir v. Greene Cty. Jail Emps.*, 487 F.3d 1115, 1119 (8th Cir. 2007). When a claim of retaliatory discipline is made, the DOC "must simply prove that there was 'some evidence' supporting their decision to discipline [the inmate], for if the contested discipline was imposed for an actual violation of prison rules, the retaliatory discipline claim must fail." *Goff v. Burton*, 91 F.3d 1188, 1191 (8th Cir. 1996).

Appellant argues that "all of the extended incarceration he has received was due to his exercise of his sovereign nationality." Appellant contends that "[a]ll of the discipline had a relation in some form or manner of relating to [appellant]'s exercise of his God-given, Constitutional, civil, human and Birthright to declare and exercise his Nationality, regardless of the different violation codes or names that the Respondent used."

The district court correctly determined that appellant failed to make even a prima facie case, because appellant's claim of sovereign nationality is not constitutionally protected. Courts have found such claims to be invalid and frivolous. *See Schneider*, 910 F.2d at 1570.

The district court also correctly determined that, even if appellant made a prima facie showing of having exercised a constitutionally protected right, appellant failed to demonstrate that he was disciplined for exercising that right.

The record supports the district court's determination that, of the 143 days of extended incarceration, post-2011, none were imposed for his having actually filed false lien claims. Appellant's arguments concerning this issue either misapprehend or misrepresent the factual record.

III. Appellant was not denied procedural due process.

In his petition, appellant alleged that he was denied procedural due process at the disciplinary hearings because he requested that certain witnesses be present and they were not, the hearing officer refused to call the Minnesota Secretary of State's office to confirm or deny the filing of a UCC lien on the law librarian, the hearing officer applied a "some evidence" standard, and the hearing officer was biased.

The district court found that appellant "fail[ed] to identify specifically what evidence or testimony he was prevented from presenting," that the hearing officers applied the correct standard, that appellant made no factual showing of bias, and that "the hearing officer's decisions were supported by at least some evidence."

"Inmates are entitled to some degree of protection under the Due Process Clause; thus, prison authorities must provide inmates with an appropriate level of due process before they are deprived of a protected liberty interest." *Carrillo v. Fabian*, 701 N.W.2d 763, 768 (Minn. 2005). When the result of the prison-discipline process is extended incarceration, an inmate has a protected liberty interest. *See Johnson v. Fabian*, 735 N.W.2d 295, 302 (Minn. 2007); *Carrillo*, 701 N.W.2d at 773. In that instance, an inmate must receive:

> (1) advance written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; and (3) a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action.

Superintendent v. Hill, 472 U.S. 445, 454, 105 S. Ct. 2768, 2773 (1985) (citing *Wolff v. McDonnell*, 418 U.S. 539, 563-67, 94 S. Ct. 2963, 2978-80 (1974)).

Appellant's appellate brief specifically mentions only the incident involving the law librarian. To the extent that appellant claims a procedural-due-process violation for other instances of discipline after 2011, appellant provided the district court with no evidence to support his claims.

Appellant also argues that "[t]he 'some evidence' standard is unconstitutional and unlawful and cannot be used to impose punishment by the Respondent or the COURT." Appellant further argues that "[t]he use of the 'some evidence' standard results in the alleged verbal accusations of a government employee being more sound and sufficient than

the verbal denials and proof of the Respondent with total violation of any and all Due Process of Law."

Minnesota law requires more than "some evidence." It requires that "a DOC hearing officer must find by a preponderance of the evidence that [an inmate] has committed a disciplinary offense before the commissioner can extend the date of his supervised release." *Carrillo*, 701 N.W.2d at 777. The record reflects that the hearing officer did apply the appropriate preponderance standard. The warden, when considering appellant's appeal of the hearing officer's decision, confirmed that the hearing officer used the appropriate standard. The preponderance-of-the-evidence standard requires more proof than the some-evidence standard. *Id.* at 775-76. Because of this, we do not further address whether the some-evidence standard is unfair or unconstitutional, because it is not the standard that was used in appellant's case.

Appellant also fails to understand the difference between the burden of proof needed to *convict* and the burden required to be met in order to *impose prison discipline*. There is no authority to support appellant's argument that prison discipline requires proof beyond a reasonable doubt or, as appellant puts it, proof "above and beyond all reasonable doubt." Here again, appellant's arguments on appeal are utterly without merit.

IV. Appellant's Eighth Amendment claim fails.

In his petition, appellant repeatedly asserts that he was "cruelly and unusually, illegally and unconstitutionally" punished by having his incarceration extended.

The district court found that, "[b]ecause extending the prison portion of an offender's sentence does not involve the unnecessary and wonton infliction of pain, [appellant]'s Eighth Amendment claim fails."

Habeas corpus is an appropriate remedy for an Eighth Amendment violation if the petitioner "establish[es] present and continuing mistreatment amounting to cruel and unusual punishment." *Kelsey v. State ex rel. Erickson*, 320 N.W.2d 438, 439 (Minn. 1982). Prison officials "may adopt reasonable restrictions governing the conduct of the inmates." *Wilkinson v. McManus*, 214 N.W.2d 671, 672 (Minn. 1974). "The Eighth Amendment comes into play only if the institutional restrictions are of such a character as to shock the general conscious of the community or are intolerable in fundamental fairness." *Id.*

Appellant argues that he "was cruelly and unusually, illegally and unconstitutionally punished by the [DOC] when [the commissioner] issued extended incarceration upon [appellant] due to [appellant]'s exercise of his protected and secured Constitutional Rights."

Appellant has not alleged any conduct by the DOC that would "shock the general conscious of the community" or be considered intolerable. *See id.* The DOC is authorized by statute to extend appellant's incarceration for violating prison rules and therefore shorten his period of supervised release. Minn. Stat. § 244.101, subds. 2, 3 (2018). Notwithstanding appellant's unsupported ramblings to the contrary, the district court correctly determined that appellant's claim does not implicate the Eighth Amendment.

V. Minn. Stat. § 244.04, subd. 3 (2018), does not apply to appellant's case.

In his petition, appellant states:

> [Appellant] acted in accordance to MN D.O.C. Policy #106.202 "Good Time Administration" and petitioned the Warden Eddie Miles, Jr., for restoration of all of the cruel and unusual, illegal and unconstitutional extended incarceration, loss of good time in accordance to Proc. C, which states: "Restoration of time as required per Minn. Stat. § 244.04, subd. 2—good time earned prior to a discipline violation may not be taken away. Extended incarceration as a result of discipline may be vacated/restored on recommendation of the facility warden to the deputy commissioner of facility services.["]

Here again, it is unclear to us what appellant is attempting to argue.

The district court interpreted this to be a claim by appellant "that the DOC violated Minnesota's good-time statute, Minn. Stat. § 244.04, by failing to include a provision for the 'restoration' of his extended incarceration."

Section 244.04 does not apply to appellant. "The provisions of [section 244.04] do not apply . . . to persons whose crimes were committed on or after August 1, 1993." Minn. Stat. § 244.04, subd. 3. Appellant committed his crimes in 1998 and was sentenced for them in 1999. As the district court correctly noted, appellant's sentence is governed by Minn. Stat. § 244.05, subd. 1b (2018). Under that section, "[t]he amount of time an inmate serves on supervised release shall be equal in length to the amount of time remaining in the inmate's executed sentence after the inmate has served the term of imprisonment and any disciplinary confinement period imposed by the commissioner."

The district court did not err in construing and rejecting this argument.

VI. Appellant's argument concerning the filing of oaths fails.

Appellant argues that the district court judge erred because "there was no Oath filed by the alleged attorneys" in this case. Appellant cites no authority for the notion that judges

and attorneys must file oaths and licenses in each district court case in which they become involved. And we can find none.

VI. Appellant was not entitled to hearing on his habeas petition.

Because appellant appears to argue throughout his brief that he made a prima facie case for habeas relief, we presume that appellant believes that the district court ought to have held an evidentiary hearing on his petition.

The district court found that an evidentiary hearing was not warranted on appellant's petition because appellant "(1) failed to state a prima facie case for habeas relief; (2) that no disputed issues of material fact exist; and (3) that the issues raised by [appellant] can be decided as a matter of law."

"[A] habeas corpus hearing is not needed when the petitioner has not alleged sufficient facts to constitute a prima facie case for relief." *Case v. Pung*, 413 N.W.2d 261, 263 (Minn. App. 1987), *review denied* (Minn. Nov. 24, 1987).

No evidentiary hearing was necessary on appellant's habeas petition. The record definitively establishes that appellant is not entitled to habeas relief.

VIII. Appellant's remaining arguments fail.

Appellant's brief makes additional arguments that—try as we might—we cannot understand. To say the least, the concepts expressed are foreign to any traditional understanding of law. *See Schneider*, 910 F.2d at 1570.

We have considered all of appellant's arguments to the extent that we can understand them and conclude that they have no merit.

Affirmed.