STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0314

Kristopher Lee Roybal,
Appellant,

vs.

Paul Schnell,
Respondent.

Filed July 20, 2020
Affirmed
Bjorkman, Judge

Crow Wing County District Court
File No. 18-CV-19-3547

Kristopher Roybal, Togo, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Corinne Wright-MacLeod, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Halbrooks, Judge.*

* 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

BJORKMAN, Judge

Appellant challenges the denial of his petition for a writ of habeas corpus, arguing that the district court erred because the Minnesota Department of Corrections (department) violated his due-process and equal-protection rights by refusing to let him participate in an early-release program. We affirm.

FACTS

Appellant Kristopher Lee Roybal was charged with four controlled-substance offenses and a driving offense following a traffic stop on June 13, 2018. After a January 2019 stipulated-facts trial, the district court found him guilty of a second-degree controlled-substance offense and imposed a 95-month executed prison sentence.

Roybal asked to participate in the "Challenge Incarceration Program" (challenge program), which department policy describes as an early-release program for offenders who "successfully complete targeted, individualized programming that lowers their risk of recidivism." *See* Minn. Stat. §§ 244.17-.172 (2018); *see also Hines v. Fabian*, 764 N.W.2d 849, 850 (Minn. App. 2009) (describing challenge program), *review denied* (Minn. July 22, 2009). The department initially found Roybal ineligible because he had previously been unsuccessful in the challenge program and was serving a sentence on a new conviction.[1]

[1] Roybal participated in the challenge program in 2014, while serving a driving-while-impaired (DWI) sentence. But he violated his early-release conditions and returned to prison to serve the remainder of his sentence.

In September 2019, Roybal petitioned for a writ of habeas corpus against respondent Paul Schnell, commissioner of the department. Roybal's petition asserts, among other claims, that the department violated his due-process and equal-protection rights by denying him entry into the challenge program. Roybal requested a transfer to a department facility that offered him treatment—a program prerequisite—or a court order directing his admission into the challenge program.

The district court denied the petition in all respects without a hearing. As pertinent to this appeal, the district court concluded that the department did not violate Roybal's due-process or equal-protection rights by denying his request to participate in the challenge program. Roybal appeals.

D E C I S I O N

I. Roybal's appeal is not moot.

As an initial matter, the commissioner argues that this appeal is moot because the department subsequently found Roybal eligible for the challenge program.[2] "An appeal is moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible." *State ex rel. Ford v. Schnell*, 933 N.W.2d 393, 401 (Minn. 2019) (quotation omitted).

We decline to find Roybal's appeal moot for two reasons. First, Roybal's entry into the program does not guarantee that he will achieve early release from prison. *See id*. at 402 (concluding that a released inmate's habeas challenge is not moot when his release

[2] Following Roybal's initial request, the department modified the challenge program's eligibility requirements.

from prison was likely temporary and could lead to future incarceration). Second, Roybal raises issues that "are capable of repetition, yet likely to evade review," which is one of the exceptions to the mootness doctrine. *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015). This is the second time Roybal has sought entry into the challenge program. And it is likely other inmates will do so, advancing arguments similar to those Roybal presents here. Due to the short timelines for early-release programs, constitutional challenges to the denial of entry into such a program may not be subject to court review before the period of incarceration ends. *See, e.g.*, *State v. Brooks*, 604 N.W.2d 345, 348 (Minn. 2000) (stating that future litigants could be left without a remedy if the case were declared moot because "[m]ost pretrial bail issues are, by definition, short-lived"). Accordingly, we consider Roybal's arguments.

II. The department did not violate Roybal's due-process rights.

In an appeal from the district court's denial of a petition for a writ of habeas corpus, we give great weight to the district court's findings and will sustain them "if they are reasonably supported by the evidence." *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006). We review questions of law de novo. *Id*.

"The Due Process Clause of the U.S. Constitution provides that a state shall not 'deprive any person of life, liberty, or property without due process of law.'" *Carrillo v. Fabian*, 701 N.W.2d 763, 768 (Minn. 2005) (quoting U.S. Const. amend. XIV, § 1); *see* Minn. Const. art. I, § 7. Prison inmates are guaranteed "some degree of protection under the Due Process Clause," and the department must provide "an appropriate level of due

process" before it deprives a prisoner of a "protected liberty interest." *Carrillo*, 701 N.W.2d at 768. Whether due process is required presents a question of law that we review de novo. *Id.*

In *Hines*, this court considered whether an inmate's termination from the challenge program implicated a protected liberty interest. 764 N.W.2d at 852. Hines had been accepted into the challenge program, but the commissioner rescinded his acceptance after a case review revealed community concerns due to "aggravating-offense characteristics." *Id*. at 851-52. We held that "[a] prison inmate who is terminated from the [challenge program] because he does not meet discretionary admission criteria does not have a protected liberty interest in remaining in the program and is not entitled to procedural due process before termination." *Id*. at 850 (syllabus). In reaching this result, we distinguished *Carrillo*, noting that an inmate has a protected liberty interest in his supervised release date because it is part of his sentence and affects the length of imprisonment. *Id*. at 853. In contrast, the challenge program is one of the department's rehabilitation services. An inmate's interest in entering the challenge program is "entirely" up to the discretion of the commissioner, who may deny admission even if the inmate meets eligibility requirements. *Id*. Because an inmate's participation in the challenge program depends on the commissioner's discretion and does not affect his sentence, any limitation on an inmate's participation "does not impose an atypical and significant hardship in relation to the ordinary incidents of prison life" or otherwise implicate a protected liberty interest. *Id*. at 855.

Roybal acknowledges that *Hines* is controlling and defeats his due-process claim. But he argues that we should overrule *Hines* because it is "fundamentally flawed as a matter of law" and "wrongly decided." He cites three reasons why we should overrule *Hines*, none of which persuades us to do so.

First, Roybal asserts that the use of mandatory language in the statute establishing the challenge program "unambiguously precludes the very discretion created . . . in *Hines* by judicial fiat." We disagree. Roybal argues that the provision stating that "[t]he commissioner *shall* strive to select sufficient numbers of eligible offenders" to fill the program, Minn. Stat. § 244.17, subd. 1(b) (emphasis added), prohibits the exercise of discretion. But this argument ignores the statutory context. Minn. Stat. § 244.17, subd. 1(a), provides that "[t]he commissioner *may* select offenders who meet the eligibility requirements." Subdivision 1(a) grants the commissioner the discretion to select the participants in the challenge program. Subdivision 1(b) does not alter this discretion; it simply directs the commissioner to try to fill the program with eligible participants. Interpreting these provisions to require the commissioner to fill the challenge program to capacity or admit a particular inmate would invalidate the commissioner's discretion to select offenders for the program—an absurd result. *See State v. Basal*, 763 N.W.2d 328, 334 (Minn. App. 2009) ("When ascertaining the legislature's intent, we must assume that the legislature does not . . . intend absurd or unreasonable results." (alteration in original) (quotation omitted)).

Second, Roybal contends that *Hines* violates the Supremacy Clause because it conflicts with United States Supreme Court precedent and is inconsistent with *Carrillo*'s

recognition that an offender has a "protected liberty interest in his supervised release date." *Carrillo*, 701 N.W.2d at 773. Roybal points to *Greenholtz v. Inmates of Neb. Penal & Correctional Complex*, 442 U.S. 1, 99 S. Ct. 2100 (1979), and other federal caselaw, for the proposition that an offender's interest in attending and completing the program is functionally the same as other recognized liberty interests held by offenders, such as parole or credit for good time. *See also Wolff v. McDonnell*, 418 U.S. 539, 557, 94 S. Ct. 2963, 2975 (1974) (holding that an inmate has a liberty interest in revocation of prison "good time" that may not be "arbitrarily abrogated"). *Greenholtz* differentiates between parole, in which an inmate has no liberty interest because it is a "mere anticipation or hope of freedom," and parole revocation, in which an inmate has a liberty interest because he had been released from prison and thus able to participate in "normal life." 442 U.S. at 10, 99 S. Ct. at 2105 (quotation omitted). Under the *Greenholtz* analysis, the interest Roybal wishes to protect—the opportunity to participate in the challenge program—is anticipatory. It does not constitute a liberty interest for which due process must be afforded.

Third, Roybal argues that *Hines* conflicts with both *Carillo* and *Heilman v. Courtney*, 926 N.W.2d 387 (Minn. 2019). We disagree. As noted above, *Carillo* holds that an inmate has a protected liberty interest in his supervised release date. 701 N.W.2d at 773. *Hines* did not present such a challenge, and we concluded that the interest in the early release offered by the challenge program is merely anticipatory because it provides only "the mere possibility of an accelerated supervised-release date" that is "not guaranteed." 764 N.W.2d at 854; *see Sandin v. Conner*, 515 U.S. 472, 487, 115 S. Ct.

2293, 2302 (1995) ("The decision to release a prisoner rests on a myriad of considerations.").

Likewise, *Heilman* did not address whether an inmate has a protected liberty interest in entering the challenge program. *Heilman* addressed a question of statutory interpretation, holding only that the conditional release imposed as a part of a DWI sentence begins when an inmate starts the second phase of the challenge program and is released into the community, where he has "certain freedoms, including social time, visitor privileges, and the ability to find work, receive an education, and worship *in the community*." 926 N.W.2d at 395. *Heilman* is not controlling because Roybal was neither accepted into the challenge program nor released from it, and therefore has no expectancy of a particular release date created by participation in the program.[3]

III. The department did not violate Roybal's right to equal protection.

Both the federal and state constitutions guarantee equal protection under the law. U.S. Const. amend. XIV, § 1; Minn. Const. art. 1, § 2. "The equal protection clause guarantees that similarly situated individuals receive equal treatment." *State v. Frazier*, 649 N.W.2d 828, 837 (Minn. 2002). "An essential element of an equal protection claim is that the persons claiming disparate treatment must be similarly situated to those to whom

[3] Roybal also articulates a substantive due-process claim. To support this claim, he must allege "governmental conduct so egregious that it shocks the conscience." *Favors v. Kneisel*, 902 N.W.2d 92, 97 (Minn. App. 2017). Roybal's claim fails because he alleges no such conduct on the part of the commissioner. *See State v. Rader*, 597 N.W.2d 321, 324 (Minn. App. 1999) (rejecting substantive due-process claim when the claimant could not "show any intended . . . personal harm from the alleged denial of his constitutional rights").

they compare themselves. Similarly situated groups must be alike in all relevant respects." *St. Cloud Police Relief Ass'n v. City of St. Cloud*, 555 N.W.2d 318, 320 (Minn. App. 1996) (quotation omitted), *review denied* (Minn. Jan. 7, 1997). Where, as here, an equal-protection claim does not involve a member of a suspect class or a violation of a fundamental constitutional right, courts consider whether there is a rational basis for treating persons differently. *Kolton v. County of Anoka*, 645 N.W.2d 403, 411 (Minn. 2002).

Under federal law, a rational basis exists "if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 367, 121 S. Ct. 955, 964 (2001) (quotation omitted). In Minnesota, a rational basis exists if:

> (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

State v. Holloway, 916 N.W.2d 338, 348 (Minn. 2018) (quotations omitted).

Roybal appears to base his equal-protection claim on "the fact that other offenders have been allowed to participate in the program more than once." Roybal does not identify a class of persons with whom he is similarly situated and offers no argument as to whether there is a rational basis for treating the two classes differently. In rejecting Roybal's equal-

protection claim, the district court found that challenge program staff applied "the policy in the same neutral manner as they would have applied for any other participant; and there is no indication that Roybal was intentionally singled out for less favorable treatment than any other applicant." The district court further concluded that the department "had a rational basis for excluding Roybal, as he had previously violated the conditions of the [challenge program] that he had been allowed to enter when he was serving a prison sentence in 2014, and he now is serving a new sentence." On this record, we agree with the district court that Roybal's equal-protection claim fails.

Affirmed.