STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0348

Michael John Husten,
Appellant,

vs.

Paul Schnell, Minnesota Commissioner of Corrections,
Respondent.

Filed December 13, 2021
Affirmed
Reilly, Judge

Ramsey County District Court
File No. 62-CV-20-3939

Bradford Colbert, Legal Assistance to Minnesota Prisoners, St. Paul, Minnesota (for appellant)

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

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

SYLLABUS

The "favorable termination rule," adopted by the United States Supreme Court in *Preiser v. Rodriguez*, 411 U.S. 475 (1973), and *Heck v. Humphrey*, 512 U.S. 477 (1994), applies in state court to require that an incarcerated individual obtain habeas corpus relief before pursuing claims under 42 U.S.C. § 1983, if success on those claims would necessarily demonstrate the invalidity of confinement or its duration.

OPINION

REILLY, Judge

Appellant appeals the district court's dismissal of his 42 U.S.C. § 1983 claims and his constitutional challenge to his indeterminate sentence. Because the district court did not err in determining that appellant's section 1983 claims are precluded by his failure to prevail on a petition for a writ of habeas corpus and that his challenge to the administration of his sentence is barred by the doctrine of collateral estoppel, we affirm.

FACTS

In 2012, appellant Michael Husten was convicted of second-degree murder for an offense he committed in 1975. Based on his plea agreement, the district court imposed an indeterminate sentence of up to 20 years in prison. Minn. Stat. § 609.19 (1974) (providing sentence up to 40 years' imprisonment). When the offense was committed, individuals who were sentenced to indeterminate sentences of less than life imprisonment were eligible for parole. Minn. Stat. § 609.12, subd. 1 (1974). Under this indeterminate sentencing scheme, a prisoner could be paroled at the discretion of the Minnesota corrections authority. Minn. Stat. § 243.05 (1974). For crimes committed on or after May 1, 1980, a determinate sentence applies under the Minnesota Sentencing Guidelines. Minn. Sent. Guidelines 2 (2020). But the commissioner of corrections still maintains authority to determine whether an offender whose offense was committed before May 1, 1980, is eligible for parole. Minn. Stat. § 244.08, subd. 1 (2020) (stating the commissioner retains all powers and duties with respect to individuals convicted of crimes committed before

April 30, 1980). Husten is currently incarcerated at the Minnesota Correctional Facility at Moose Lake with a parole hearing scheduled for February 2022.

On a self-represented basis in 2016, Husten petitioned for a writ of habeas corpus in Washington County District Court, alleging in part that his indeterminate sentence violated the ex post facto provisions of the Minnesota and United States Constitutions. The district court denied Husten's habeas corpus petition, and this court affirmed. We held that "[i]t is undisputed that Husten was properly sentenced to a 20-year indeterminate sentence. This sentence was authorized under the statute that applied to him when he committed the second-degree murder in 1975." *Husten v. Roy*, No. A17-0775, 2017 WL 5661583 (Minn. App. Nov. 27, 2017), *rev. denied* (Minn. Jan. 24, 2018).

In April 2020, after the World Health Organization declared the COVID-19 outbreak a global pandemic, the Minnesota Department of Corrections (the department) created a temporary process for inmates to apply for COVID-19 conditional medical release (COVID-19 CMR). The COVID-19 CMR program allows incarcerated individuals to apply for temporary release from custody, if they have existing medical conditions that put them at a higher risk of serious illness or death from COVID-19. The department screens COVID-19 CMR applicants and grants release at its discretion.[1] The department later published an update on COVID-19 CMR, stating that inmates "subject to the parole process . . . are not eligible for [the department's] conditional medical release related to

[1] In contrast, inmates need not apply for release under the traditional conditional medical release program (CMR). Minn. Stat. § 244.05, subd. 8 (2020). Instead, the department identifies eligible persons and grants CMR on its own initiative. *Id.*

COVID-19. This decision is due to the different obligations for notification, publication, and parole process review."

Husten suffers from several serious medical conditions making him particularly susceptible to complications and death from COVID-19. Husten applied for COVID-19 CMR and the department granted his application. But five days later, the department withdrew its approval and notified Husten that, because he was serving an indeterminate sentence and subject to the parole process, he was not eligible for the COVID-19 CMR program.

Husten filed a complaint in district court against Paul Schnell, the Commissioner of Corrections (the commissioner), asserting two claims: (1) that the commissioner denied him equal protection of the laws by declaring him ineligible for COVID-19 CMR based on his indeterminate sentence, and (2) that the calculation of his sentence violated ex post facto provisions of the Minnesota and United States Constitutions. The district court dismissed the action with prejudice concluding: (1) that Husten's section 1983 claims were precluded because he had not prevailed in a habeas corpus action, and (2) that his ex post facto claim was also barred by the doctrine of collateral estoppel because he raised the same issue in his 2016 habeas corpus action. Husten appeals from the resulting judgment.

ISSUES

1. Did the district court err in concluding that Husten's section 1983 claims are precluded by his failure to first bring and prevail in a habeas corpus action?

2. Did the district court err in concluding that Husten's constitutional challenge to his indeterminate sentence is barred by the doctrine of collateral estoppel?

ANALYSIS

The district court dismissed Husten's section 1983 claims with prejudice, concluding that Husten was barred from bringing these claims given the Supreme Court's holdings in *Preiser* and *Heck*. *See Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Heck v. Humphrey*, 512 U.S. 477 (1994). We review de novo a district court's decision on a motion to dismiss and limit our review to whether the complaint sets forth legally sufficient claims for relief. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). We accept the allegations in the complaint as true and "construe all reasonable inferences in favor of the nonmoving party." *Id.* (quotation omitted).

I. The district court did not err in concluding Husten's section 1983 claims are precluded by his failure to prevail in a habeas corpus action.

This case is about whether an incarcerated individual can bring claims under the federal Civil Rights Act, 42 U.S.C. § 1983, in state court to challenge the fact or duration of his incarceration if the individual has not yet succeeded in a habeas corpus action. Both the writ of habeas corpus and section 1983 provide access to a judicial forum to challenge alleged unconstitutional treatment by state officials. 28 U.S.C. § 2254; 42 U.S.C. § 1983; Minn. Stat. § 589.01 (2020). But a writ of habeas corpus and section 1983 claims differ in procedure and scope. We begin by comparing the nature of habeas corpus relief, under both state and federal law, with section 1983 claims.

A. Habeas corpus relief versus section 1983

Minnesota prisoners may petition for a writ of habeas corpus either under the Minnesota habeas corpus statute, Minnesota Statutes chapter 589, or under the federal

habeas corpus statute, 28 U.S.C. § 2254. A prisoner may file a writ in Minnesota state court under chapter 589 to challenge unlawful imprisonment or restraint. Minn. Stat. § 589.01; *Kelsey v. State*, 283 N.W.2d 892, 895 (Minn. 1979) (*Kelsey II*).

Similarly, a federal writ of habeas corpus can be sought in federal court asserting that an individual is in "custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Under the federal statute, a prisoner must exhaust all state remedies unless there are no available or otherwise effective state corrective processes. *Id.* (b)(1)(A)-(B). This exhaustion requirement provides the state court with the first opportunity to correct constitutional errors through alternative remedies. *Preiser*, 411 U.S. at 492. A writ of habeas corpus is narrow in scope and "not available when there is some other regular legal procedure to remedy the alleged wrong." *State ex rel. Young v. Schnell*, 956 N.W.2d 652, 674 (Minn. 2021).

Section 1983 provides a federal civil action to challenge deprivation of constitutional rights under color of state law. 42 U.S.C. § 1983. Unlike the federal habeas corpus statute, section 1983 does not include an exhaustion-of-remedies requirement. And the broad language of section 1983 could be interpreted to allow an incarcerated individual to pursue claims challenging the fact or duration of his confinement without first obtaining a writ of habeas corpus. *See Preiser*, 411 U.S. at 489 (acknowledging the breadth of statutory language). Relief under section 1983 includes monetary damages or injunctive relief but it does not necessarily mean a shorter duration of confinement. *Id.*

Because both section 1983 and writs of habeas corpus provide remedies for constitutional violations, the United States Supreme Court has analyzed whether the two

causes are interchangeable. Thus, a review of United States Supreme Court cases guides our analysis.

B. United States Supreme Court caselaw on habeas corpus relief and section 1983 claims

i. *Preiser v. Rodriguez*

The United States Supreme Court first addressed the interrelationship between section 1983 claims and the federal habeas corpus statute in *Preiser v. Rodriguez*, 411 U.S. 475. In that case, three state prisoners challenged the revocation of good-behavior-time-credits and sought injunctive relief to restore the credits. *Id.* at 477. Rather than seeking relief under the habeas corpus statute, the prisoners sued under section 1983. *Id.* The Court addressed whether state prisoners could obtain equitable relief under section 1983 or whether they must proceed under the federal habeas corpus statute. *Id.* at 478.

The Court analyzed the language of section 1983 and the common-law history of habeas corpus and held that "when a state prisoner is challenging the very fact or duration of his physical imprisonment . . . his sole federal remedy is a writ of habeas corpus." *Id.* at 484, 500. The Court further held that "even if the restoration of the respondents' credits would not have resulted in their immediate release, but only in shortening the length of their actual confinement in prison, habeas corpus would have been their appropriate remedy." *Id.* at 487.

In reaching its holding, the *Preiser* Court relied in part on federal-state comity concerns, recognizing the importance of a state's interest in prison administration: "[i]t is difficult to imagine an activity in which a State has a stronger interest . . . than the

administration of its prisons." *Id.* at 491-92. State courts and administrative bodies are familiar with the complaints of state prisoners and are "in a better physical and practical position to deal with those grievances." *Id.* at 492. Thus, the Court held that prisoners should not be allowed to circumvent state remedies, which are required to be exhausted before pursuing federal habeas relief, by filing suit under section 1983. *Id.* at 500. The Court, however, did not decide whether a suit for damages, rather than equitable relief in the form of restoration of good-behavior-time-credits, could be brought under section 1983. *Id.* ("But we need not in this case explore the appropriate limits of habeas corpus as an alternative remedy to a proper action under § 1983. That question is not before us.") Whether a state prisoner could challenge confinement by suing for damages under section 1983 was not addressed until the Court's decision in *Heck v. Humphrey*, more than 20 years later.

ii. ***Heck v. Humphrey*—"the Favorable Termination Rule"**

In *Heck*, a state prisoner filed suit in federal court under section 1983, seeking compensatory and punitive damages stemming from allegations of wrongful confinement based on an allegedly unlawful investigation underlying his conviction. *Heck*, 512 U.S. at 478-79. The prisoner did not seek injunctive relief. *Id.* at 479. The Supreme Court granted certiorari to clarify whether claims for monetary relief are cognizable under section 1983. *Id.* at 480.

The Court found that a state prisoner's claims are not cognizable under section 1983 when resolution of the claims would "necessarily imply the invalidity of his conviction or sentence." *Id.* at 487. The Court held:

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254.

Id. at 486-87. The Court's rule that a prisoner must prevail in a habeas corpus action (or otherwise obtain relief from a conviction or sentence) before bringing section 1983 claims has since been termed the favorable termination rule. *Id.* at 498-99 (Thomas, J., concurring).

iii. *Wilkinson v. Dotson*

In 2005, the Supreme Court once again addressed the relationship between section 1983 and the writ of habeas corpus. In *Wilkinson v. Dotson*, two inmates brought section 1983 claims in federal district court challenging the constitutionality of state parole procedures, seeking declaratory and injunctive relief. 544 U.S. 74, 76 (2005). The district court held that the prisoners were restricted to pursuing habeas corpus relief and dismissed the claims, but the Sixth Circuit reversed, and the Supreme Court granted review. *Id.* at 77.

The Court analyzed the progression of the favorable termination rulings, beginning with its decision in *Preiser*, noting that the primary focus had been on remedies sought by inmates. *Id.* at 78-79. The Court held:

> These cases, taken together, indicate that a state prisoner's § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the

> target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)—if success in that action would necessarily demonstrate the invalidity of confinement or its duration.

Id. at 81-82. The decision hinged on whether the prisoners' section 1983 claims implicated the validity of confinement. *Id.* at 82. In other words, if relief meant immediate release from prison or the shortening of the term of confinement, the prisoner must proceed by petition for habeas corpus, unless the prisoner had obtained a favorable termination in other proceedings. *Id.* at 79.

In *Wilkinson*, because the prisoners' requested relief was a new parole proceeding, the Court held it did not fall within the realm of the writ's common law purpose, and section 1983 claims were viable. *Id.* at 82. Specifically, a favorable judgment would not necessarily mean a shorter stay in prison, but instead would cure a procedural defect and shorten the time before a new parole hearing. *Id.* Although the outcome of the future parole hearing could mean immediate release from confinement, the Court held that such relief was too attenuated from the prisoners' claims for relief. *Id.*

C. The application of habeas corpus and section 1983 to Husten's claims

In this case, the district court, relying on the Supreme Court's favorable termination rule, concluded that Husten could not bring his section 1983 action because he had not prevailed in a habeas corpus action. Husten argues that his section 1983 claims are not barred because he brought his claims in Minnesota state court and the Supreme Court cases restricting section 1983 claims apply only in federal court. He also argues that the favorable termination rule does not apply because he is not seeking immediate release from

prison but is instead asking to be declared eligible for early release through COVID-19 CMR. The State argues that the favorable termination rule applies in state court and that Husten's request for relief falls within it.

i. The Supreme Court's favorable termination rule applies in Minnesota state courts.

Husten first argues that the district court erred in relying on the favorable termination rule because the Supreme Court's holdings only limit federal court jurisdiction and do not apply in state court actions. He argues that the rule of exhaustion from *Preiser* and *Heck* cannot apply to his claims because he is pursuing his section 1983 claims in state court. We disagree.

Federal and state courts have concurrent jurisdiction over section 1983 claims. *Williams v. Bd. of Regents of Univ. of Minn.*, 763 N.W.2d 646, 652 (Minn. App. 2009). While Husten filed his claims in state court, his claims are based on the federal civil rights statute. 42 U.S.C. § 1983. Husten cites no authority, and this court can find none, that holds that the favorable termination rule does not apply to section 1983 actions in state courts. While the *Preiser* decision focused mainly on federal-state comity concerns, it was only a part of the Court's reasoning, and later cases more explicitly apply the favorable termination rule as a predicate to a section 1983 claim. Moreover, although the Minnesota Supreme Court has not directly addressed the issue raised here, its decisions are consistent with the favorable termination rule. *See Kelsey II*, 283 N.W.2d at 893 (holding that allegations that parole authorities unconstitutionally denied parole may be addressed in habeas corpus proceedings); *Kelsey v. State ex rel. McManus*, 244 N.W.2d 53, 53 (Minn.

1976) (*Kelsey I*) (stating that "habeas corpus is an appropriate remedy if the relief to which the petitioner may be entitled is immediate release").

In sum, the district court did not err in concluding that the favorable termination rule applies to section 1983 claims brought in state court.

ii. Husten must succeed in a habeas corpus action before bringing his section 1983 claims because his request for relief challenges the duration of his confinement.

Husten next argues that the favorable termination rule does not apply in his case because he is not seeking immediate release from prison. Instead, he argues that he is simply asking to be declared eligible for potential release. Husten's request for relief includes: (1) a declaratory judgment declaring that the commissioner violated Husten's constitutional rights; (2) an order requiring the commissioner to declare Husten eligible for CMR; (3) an order requiring the commissioner to set a target release date for Husten; (4) an order and judgment awarding litigation costs, attorneys' fees, and other litigation expenses under 42 U.S.C. § 1988(b); and (5) any other relief the court deems appropriate and just.

Husten argues that, like the prisoners in *Wilkinson*, his request for relief is not a collateral attack on the fact or duration of his confinement but is instead an attack on the procedures used to decide his eligibility for his release. But in *Wilkinson*, the prisoners challenged the constitutionality of state procedures used to deny their parole eligibility. 544 U.S. at 74. Success on their claims meant that, at most, the inmates would receive a new parole eligibility hearing. *Id.* at 82. While a new parole eligibility hearing *could* mean early release from prison, early release was not assured. *Id.*

In contrast, Husten is seeking an order requiring the commissioner to declare him eligible for COVID-19 CMR and to set a target release date. Because the commissioner previously granted Husten's application for COVID-19 CMR and then rescinded that decision because Husten is serving an indeterminate sentence, being declared eligible for COVID-19 CMR would effectively grant Husten immediate release. We discern no difference on these facts between asking to be declared eligible for release and actually being released.

Husten is challenging the duration of his confinement and seeking immediate release. But he brings these challenges using the wrong procedural vehicle. Thus, we hold that when a state prisoner is challenging the fact or duration of confinement, the inmate must first prevail on a petition for a writ of habeas corpus before bringing section 1983 claims in state court. In sum, the district court did not err in dismissing Husten's section 1983 claims as barred by the favorable termination rule.

II. The district court did not err by determining Husten's ex post facto claim is barred by collateral estoppel.

Husten also challenges the district court's determination that his ex post facto claim is barred by the doctrine of collateral estoppel. Collateral estoppel is an equitable doctrine and is not rigidly applied. *Falgren v. State Bd. of Teaching*, 545 N.W.2d 901, 905 (Minn. 1996). Instead, applying the doctrine depends on whether it would "work an injustice on the party against whom estoppel is urged." *Id.* (quoting *Johnson v. Consol. Freightways, Inc.*, 420 N.W.2d 608, 613 (Minn. 1988)). "Whether collateral estoppel precludes litigation

of an issue is a mixed question of law and fact that we review de novo." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004).

Collateral estoppel, or issue preclusion, bars relitigation of an issue when: (1) the issue is identical to one in a prior adjudication, (2) the adjudication was final on the merits, (3) the party to be estopped was a party to or in privity with a party in the prior adjudication, and (4) the party to be estopped was given a full and fair opportunity to be heard on the issue. *Id.* at 840. Two claims involve the same set of factual circumstances when the same evidence will sustain both actions. *McMenomy v. Ryden*, 148 N.W.2d 804, 807 (Minn. 1967).

The district court determined that collateral estoppel applies to Husten's ex post facto claim, and we agree. First, Husten's current ex post facto claim alleges that his term of imprisonment was improperly calculated in violation of the ex post facto doctrine, and his prior claim alleged the same violation based on the same factual allegations. *See Husten*, 2017 WL 5661583, at *1. Thus, the claim asserted in his complaint arises from the same action and involves the same set of factual circumstances as his ex post facto claim in 2016. Second, the district court issued a judgment on the merits determining that the commissioner did not violate the ex post facto provisions of the Minnesota and United States Constitutions and we affirmed that decision on appeal. *See id.* There has been a final adjudication on the merits of this dispute, and the questions of fact related to Husten's sentence have been resolved. *See id.* Third, the action involves the same parties or their privies. And lastly, Husten had a full and fair opportunity to be heard on the matter.

Husten argues that, while the doctrine of collateral estoppel *could* apply, it should not apply because the district court and this court wrongly decided the issue in 2016. Husten represented himself in 2016. He now has counsel. However, his ex post facto claim remains the same. While courts may allow some leeway in the procedures afforded to self-represented litigants, Husten cites no authority, and this court finds none, that self-represented litigants can relitigate the same issue after obtaining counsel.

For a court to determine that collateral estoppel applies, all elements must be met. *Hauschildt*, 686 N.W.2d at 840. Here, we agree with the district court that all the elements of collateral estoppel have been satisfied. *Id.* at 837 (stating that fundamental to the doctrine of collateral estoppel, any "question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies" (quotations omitted)).

Because the elements of collateral estoppel have been satisfied, the district court did not err in concluding the doctrine bars further litigation of Husten's ex post facto claim.

DECISION

For the reasons set forth above, Husten's section 1983 claims are precluded under the favorable termination rule of *Preiser* and *Heck* because his claims challenge the duration or fact of his confinement. Additionally, Husten's ex post facto claim is barred by the doctrine of collateral estoppel.

Affirmed.