

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2010).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2075**

State of Minnesota, ex rel.,
Randy James Newcomb, petitioner,
Respondent,

vs.

Tom Roy,
Commissioner of Corrections,
Appellant.

**Filed June 20, 2011
Affirmed
Klaphake, Judge**

Anoka County District Court
File No. 02-CV-10-5930

David W. Merchant, Chief Appellate Public Defender, Sean M. McGuire, Assistant Public Defender, St. Paul, Minnesota (for respondent)

Lori Swanson, Attorney General, Kelly S. Kemp, Assistant Attorney General, St. Paul, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Toussaint, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this habeas appeal, appellant commissioner of the Department of Corrections challenges the district court's order releasing respondent Randy James Newcomb from

prison. Because the commissioner does not have the authority under the separation of powers doctrine to impose and enforce a conditional release term beyond the sentence imposed by the court, we affirm.

FACTS

Respondent was convicted of first-degree driving while impaired (DWI) and felony test-refusal in 2003; he was sentenced to 48 months imprisonment, and the sentence was stayed for seven years. In 2007, respondent was sent to prison for violating the conditions of his probation. Respondent was released from prison on January 12, 2009, and placed on supervised release. His sentence expired on April 13, 2010.

Under Minn. Stat. § 169A.276, subd. 1(d) (2002), a person convicted of first-degree DWI is subject to a five-year conditional release period; this statute directs the district court to include the conditional release term when imposing a sentence. The district court here failed to do so.

On December 4, 2008, an employee of the Department of Corrections (DOC) wrote to the sentencing judge asking him to send a certified amendment to the sentence that included the conditional release term. The judge never responded to this letter and never amended the sentence. The state neither appealed the sentence nor moved to correct the sentence under Minn. R. Crim. P. 27.03, subd. 9. Had the five-year conditional release term been imposed, respondent's conditional release term would expire on January 12, 2014.

Respondent violated the conditions of his supervised release and was arrested on April 14, 2010, one day after expiration of his sentence. On June 2, the commissioner

revoked his conditional release and ordered him to serve 150 days. Respondent filed a petition for habeas corpus. The district court granted the petition and this appeal by the commissioner followed.

D E C I S I O N

When the facts are undisputed, we review the district court's habeas corpus decision de novo. *Joelson v. O'Keefe*, 594 N.W.2d 905, 908 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). Statutory construction is a question of law subject to de novo review. *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 127 (Minn. 2007). The question of whether a statute is unconstitutional is one of law. *Hamilton v. Comm'r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999).

A petition for habeas corpus permits a person to challenge the legality of restraints on liberty on constitutional or jurisdictional grounds. *Joelson*, 594 N.W.2d at 908. The district court here concluded that sentencing was exclusively a judicial function and that therefore the commissioner had no authority to impose a five-year conditional release term on respondent.

Minn. Stat. § 169A.276, subd. 1(d) states that when a person is convicted of first-degree DWI and is committed to the custody of the commissioner, the district court “shall provide that after the person has been released from prison the commissioner shall place the person on conditional release for five years.” This subdivision further states that “[t]he failure of the court to direct the commissioner of corrections to place the person on conditional release, as required in this paragraph, does not affect the applicability of the conditional release provisions to the person.” *Id.*

We interpret and construe laws so as to “ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2010). To this end, it is presumed that the legislature intends an entire statute to be effective and constitutional. Minn. Stat. § 645.17(2), (3) (2010). Words and phrases are construed according to their “common and approved usage.” Minn. Stat. § 645.08(1) (2010). The word “shall” indicates that an action is mandatory. Minn. Stat. § 645.44, subd. 16 (2010).

Although we strive to carry out legislative intent, we must also consider the nature and principles of our tripartite government. Governmental powers are divided among the three branches of government—legislative, executive, and judicial—and no department “shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.” Minn. Const. art. III.

“The power to define the conduct which constitutes a criminal offense and to fix the punishment for such conduct is vested in the legislature.” *State v. Olson*, 325 N.W.2d 13, 17-18 (Minn. 1982). “[T]he imposition of the sentence within the limits prescribed by the legislature is purely a judicial function.” *Id.* at 18.¹ The legislature can “restrict the exercise of judicial discretion in sentencing, such as by providing mandatory sentences” and it can “grant an administrative body the authority to supervise a convicted person,” including the authority to set probation conditions and to return an offender to

¹ We analyze the imposition of a conditional release term as a criminal sentence. *See, e.g., Martinek v. State*, 678 N.W.2d 714, 717-18 (Minn. App. 2004) (stating in matter involving late imposition of conditional release term that due process requires that “sentencing proceedings observe the standards of fundamental fairness essential to justice”).

prison for violating these conditions. *Id.* But the power to supervise an offender does not include the power to impose a sentence.

During respondent's time in prison, the state could have taken steps to ask the district court to impose the mandatory conditional release term, such as through a petition for a writ of mandamus. The state is not left without the means to petition for correction of the sentence. We should not lightly move to blur the lines of authority between the separate branches of government, and we will not do so here.

Affirmed.