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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0399**

Rashid Kenyatta McGee, petitioner,  
Appellant,

vs.

Tom Roy, Commissioner of Corrections,  
Respondent.

**Filed October 15, 2012  
Affirmed  
Peterson, Judge**

Washington County District Court  
File No. 82-CV-1-6161

Rashid Kenyatta McGee, Bayport, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Kelly Susan Kemp, Assistant Attorney General, St. Paul, Minnesota; and

Krista Jean Guinn Fink, St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Peterson, Judge; and  
Muehlberg, Judge.\*

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**PETERSON**, Judge

This pro se appeal is from a judgment that denies appellant's application to proceed in forma pauperis and dismisses appellant's petition for a writ of habeas corpus. We affirm.

### FACTS

In 1994, appellant was convicted of second-degree murder and sentenced to 306 months in prison. While incarcerated in Minnesota from 1994 until 2004, appellant was charged with disciplinary violations 87 times, and he proceeded to a hearing six times. Appellant contends that, as a result of these violations, his release date was extended by 351 days. The record does not indicate the extended incarceration time attributable to any specific violation but does indicate that appellant's re-calculated release date was May 8, 2012.<sup>1</sup>

Appellant asserts that, in 2004, he was transferred to a prison in California for rule violations, and he remained there until November 2010, when he was returned to Minnesota. In October 2011, appellant petitioned for a writ of habeas corpus, challenging the extension of his release date by 351 days. Appellant alleged that the commissioner of corrections violated appellant's due-process rights by applying the "some evidence" standard at the disciplinary hearings and, therefore, he is entitled to his

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<sup>1</sup>Appellant asserts that his original release date was April 15, 2011, which is not consistent with 351 days of extended incarceration time and a resulting release date of May 8, 2012. The record does not indicate whether appellant was released on May 8, 2012.

original release date. *See Carillo v. Fabian*, 701 N.W.2d 763, 777 (Minn. 2005) (stating that an inmate has a protected liberty interest in his release date and due process requires the commissioner to apply a preponderance-of-the-evidence standard before extending a release date).

The district court concluded that appellant's habeas petition is frivolous because *Carillo* does not apply retroactively and, therefore, denied appellant's application to proceed in forma pauperis and dismissed appellant's petition with prejudice. This appeal followed.

### **D E C I S I O N**

The district court shall dismiss with prejudice an action brought by an inmate seeking to proceed in forma pauperis if the action is frivolous or malicious. Minn. Stat. § 563.02, subd. 3 (2010). "A frivolous claim is without any reasonable basis in law or equity and could not be supported by a good faith argument for a modification or reversal of existing law." *Maddox v. Department of Human Services*, 400 N.W.2d 136, 139 (Minn. App. 1987) (quotation and alteration omitted). The district court has broad discretion in allowing in forma pauperis proceedings and will not be reversed absent an abuse of discretion. *Id.*

The United States and Minnesota Constitutions provide that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV; Minn. Const. art. I, § 7. Though an inmate's "rights may be diminished by the needs and exigencies of the institutional environment," an inmate retains due-process protection of liberty interests. *Wolff v. McDonnell*, 418 U.S. 539, 555-56, 94 S. Ct. 2963,

2974 (1974). In *Carrillo*, the supreme court held that an inmate has a protected liberty interest in his release date and that application of the “some evidence standard” at a prison disciplinary hearing violates due process when an inmate’s release date is extended. 701 N.W.2d at 777. *Carillo* requires that the commissioner apply a preponderance-of-the-evidence standard. *Id.*

Appellant asserts that *Carrillo* should apply retroactively. But, as the district court correctly noted, this court specifically concluded in *Aziz v. Fabian*, 791 N.W.2d 567, 572 (Minn. App. 2010) that *Carrillo* does not apply retroactively. Appellant has not provided any legal or factual basis for his claim that his liberty interest was violated when the evidentiary standard articulated in *Carrillo* was not applied in his disciplinary hearings, which concluded before *Carrillo* was decided. The district court did not abuse its discretion by concluding that appellant’s action is frivolous.

Appellant also argues that prospectively applying *Carrillo* violates his right to equal protection because he and Carrillo were both incarcerated during the years from 1994 until 2005. But appellant did not raise an equal-protection issue in the district court, and we decline to consider an issue that is raised for the first time on appeal. *See State ex. rel. Kaus v. McManus*, 306 Minn. 487, 493 n.1, 238 N.W.2d 597, 601 n.1 (1976) (declining to consider due-process issue raised for first time on appeal in habeas proceeding).

**Affirmed.**