STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0746

Belford William Reitz, III, petitioner,
Appellant,

vs.

Steve Hammer, et al.,
Respondents.

Filed November 12, 2013
Affirmed
Connolly, Judge

Chisago County District Court
File No. 13-CV-13-78

Belford W. Reitz, III, Rush City, Minnesota (pro se appellant)

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

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

In this pro se challenge to the denial of his habeas corpus petition, appellant argues that the conditional-release period of his sentence is illegal and unconstitutional and that

his risk-level classification should be decreased. Because neither a sentence nor a risk-level classification may be challenged in a habeas corpus petition, we affirm.

FACTS

In 1991, appellant Belford Reitz, then 18, pleaded guilty to fourth-degree criminal sexual conduct. He was placed on probation for ten years.[1] This conviction was introduced as *Spreigl* evidence in 2002, when appellant was tried and convicted by a jury on two counts of second-degree criminal sexual conduct with minors.

At the 2002 sentencing hearing, the district court sentenced appellant to concurrent terms of 36 months in prison and 41 months in prison and told him each time, "[Y]ou are advised that you will be placed on a ten year conditional release period to the Commissioner of Corrections upon completion of this sentence."

In November 2002, the Department of Corrections (DOC) Records Office Supervisor wrote to the district court, saying:

> In [appellant's] warrant of commitment and sentencing order, there was no mention of the conditional release period required by Minn. Stat. § 609.109, subd. 7. In order to accurately calculate and inform the inmate about the sentence, we need to know whether the conditional release period should be included in this sentence.
>
> In order to be sure that the sentence is accurately administered, we need to know exactly what the court intended.

[1] Appellant later sought to withdraw his guilty plea. His request was denied as untimely, and the denial was affirmed. *Reitz v. State*, A13-0261 (Minn. App. Oct. 21, 2013) (*Reitz II).*

The response to this letter, written by a law clerk for the district court, states, "By examining the transcript of the sentencing proceeding, I confirmed that [appellant] was sentenced to ten (10) years of conditional release on each count in addition to the sentences of incarceration and supervised release. This is in conformity with Minn. Stat. § 609.109, subd. 7(a)."

In his direct appeal, appellant did not challenge his sentence but argued that he was entitled to a new trial because the *Spreigl* evidence had been improperly admitted. This court affirmed the denial of his new-trial motion and conviction. *State v. Reitz*, No. C2-02-2230, 2003 WL 22434266 *4 (Minn. App. Oct. 28, 2003) (concluding there was no error in the admission of the *Spreigl* evidence) (*Reitz I*).

In 2005, appellant was released from prison on intensive supervised release (ISR). He violated the ISR conditions and was again incarcerated. In 2010, the End of Confinement Review Committee (ECRC) classified him as a Risk Level III offender, and he was again released.

In 2011, ISR agents saw appellant transporting minors in his vehicle. Appellant had also been working in bars and been terminated from sex-offender treatment, and erotic images of children and pornographic images of adults were found on his computer. All of these activities violated the conditions of his release. He was reincarcerated, ordered to complete sex-offender treatment, and told that his projected release date could be extended if he did not do so.

In 2013, appellant filed a habeas-corpus petition with the district court, alleging that no conditional-release period had been imposed with his 2002 sentence, that such a

period would have been unconstitutional, and that his Level III status should be changed to Level I or Level II.[2] The DOC filed a response, arguing that appellant's criminal sentence, including the conditional-release period, was being administered as imposed and that appellant's challenges to his sentence and his risk level could not be brought in a habeas-corpus petition.

The district court denied appellant's habeas-corpus petition, concluding that the conditional-release period was twice imposed during the 2002 sentencing hearing, that the constitutional challenges to appellant's sentence were untimely, and that challenges to a risk-level classification cannot be raised in a habeas-corpus petition. Appellant moved for reconsideration; his motion was denied. He challenges that denial.

D E C I S I O N

On review, this court will give "great weight to the trial court's findings in considering a petition for a writ of habeas corpus and will uphold the findings if they are reasonably supported by the evidence." *Northwest v. LaFleur*, 583 N.W.2d 589, 591 (Minn. App. 1998), *review denied* (Minn. Nov. 17, 1998).

In his habeas-corpus petition and his motion for reconsideration, appellant asked for a variety of findings and conclusions that his conditional-release period is illegal and

[2] In 2011, appellant had sought postconviction relief in another county, where he was then incarcerated, on the ground that no conditional-release term was imposed at the sentencing hearing. The district court in that county rejected his argument and denied his petition, and he did not appeal.

unconstitutional.[3] But a habeas corpus petition is not a means of appealing from a conviction or a sentence. *See Breeding v. Utecht*, 239 Minn. 137, 139, 59 N.W.2d 314, 316 (1953) ("The writ [of habeas corpus] may not be used as a cover for a collateral attack upon a judgment of a competent tribunal which had jurisdiction of the subject matter and of the person of the [petitioner].") Appellant's incarceration resulted from the jury's finding that he was guilty and the district court's judgment based on that verdict, which was previously challenged by appellant and affirmed by this court in *Reitz I* . Once a direct appeal has been taken, "all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976); *see also Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005) ("*Knaffla* also bars claims that should have been known at the time of direct appeal.").

Moreover, a habeas-corpus petition is brought against the entity having jurisdiction over the person of the petitioner, in this case the DOC, and the DOC has power only to administer the judgment of a court, not to change it. Appellant cannot challenge the legality and constitutionality of his conditional-release period in his habeas-corpus petition.

Nor can appellant use the habeas-corpus petition to challenge the August 2010 decision of the ECRC, which must be challenged within 14 days and proceed before an

[3] These were based on the exchange of letters between the DOC and the court concerning the fact that the warrant of commitment did not include the conditional-release term; appellant inferred from the correspondence that the conditional-release term was actually imposed not by the court but by the law clerk who wrote the letter and objected to it on that ground.

administrative-law judge, not the district court. *See* Minn. Stat. § 244.052, subd. 6 (2012). The district court correctly concluded that appellant's challenge to his risk level "is inappropriately before the Court in a habeas-corpus proceeding."[4]

Affirmed.

[4] Even if appellant's challenges to his conviction and sentence were properly brought in a habeas-corpus petition, they are without merit. He argues that, by adding the conditional-release period to his sentence, the DOC "usurped judicial authority" and that a conditional-release term is unconstitutional because it is "a second punishment for the same crime." Both arguments were rejected in *State v. Schwartz*, 628 N.W.2d 134, 140-41 (Minn. 2001) (concluding that "the commissioner's statutory authority over . . . conditional release operates within and does not impede the court's sentencing authority" and that "the commissioner's subsequent revocation and re-incarceration decision does not alter the sentence of the court or impose a new sentence").