STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0868

Peter Allan, petitioner,
Appellant,

vs.

Lucinda Jesson, Commissioner,
Respondent.

Filed December 16, 2013
Affirmed
Bjorkman, Judge

Carlton County District Court
File No. 09-CV-12-2354

Peter Allan, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Barry R. Greller, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Stauber, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant challenges the district court's denial of his petition for a writ of habeas corpus, arguing that (1) he has been deprived of due process because he has not been afforded adequate treatment during his civil commitment and (2) his commitment

constitutes cruel and unusual punishment. He also argues that he is entitled to an evidentiary hearing on these claims. We affirm.

FACTS

Appellant Peter Allan was indefinitely civilly committed to the Minnesota Sex Offender Program (MSOP) as a sexual psychopathic personality (SPP) and a sexually dangerous person (SDP) in 2009. We affirmed his commitment on appeal. *In re Civil Commitment of Allan*, No. A09-1607 (Minn. App. Feb. 23, 2010). After pursuing several other avenues for relief from his commitment,[1] Allan filed a petition for a writ of habeas corpus on October 2, 2012. In support of his petition, Allan submitted a March 2011 report by the Minnesota Office of the Legislative Auditor. *See generally* Minn. Office of the Legis. Auditor, *Civil Commitment of Sex Offenders* (Mar. 2011). Allan argued that the report is "evidence that the State of Minnesota does not offer adequate treatment for civilly committed persons" and that the failure to provide adequate treatment violates his right to due process. After considering written submissions from Allan and respondent

[1] Allan sought relief from the commitment under Minn. R. Civ. P. 60.02(f), which the district court denied on May 21, 2010. He did not appeal that order but filed a second rule 60.02(f) motion, which the district court denied on October 13, 2010. Allan appealed the October order, No. A10-2034. This court dismissed the appeal as improper because the second motion, in effect, requested reconsideration of the May 21, 2010 order, and therefore is not appealable. The supreme court denied further review on January 26, 2011. The following month, Allan filed a third motion for relief under rule 60.02(f); the district court denied relief, and Allan again appealed, No. A11-0775. This court dismissed the appeal for the same reasons it dismissed appeal No. A10-2034. The supreme court initially granted further review and stayed the appeal pending disposition of *In re Civil Commitment of Lonergan*, 811 N.W.2d 635 (Minn. 2012). After deciding *Lonergan*, the supreme court vacated its initial order and denied review on May 15, 2012.

Commissioner of the Minnesota Department of Human Services, the district court denied Allan's petition. This appeal follows.

D E C I S I O N

On appeal from the denial of a habeas petition, we defer to the district court's factual findings and will sustain them so long as the evidence reasonably supports them. *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.*

A writ of habeas corpus is a statutory civil remedy that provides "relief from imprisonment or restraint." Minn. Stat. § 589.01 (2012). It is not available to "persons committed or detained by virtue of the final judgment of a competent tribunal of civil or criminal jurisdiction." *Id.* To obtain habeas relief, a petitioner "must allege either a lack of jurisdiction or a violation of a constitutional right." *Beaulieu v. Minn. Dep't of Human Servs.*, 798 N.W.2d 542, 548 (Minn. App. 2011), *aff'd*, 825 N.W.2d 716 (Minn. 2013). The petitioner bears the burden of proving that his detention is unlawful. *Case v. Pung*, 413 N.W.2d 261, 262 (Minn. App. 1987), *review denied* (Minn. Nov. 24, 1987). An evidentiary hearing is not required when the petitioner fails to allege sufficient facts to constitute a prima facie case for relief or demonstrate a factual dispute. *Seifert v. Erickson*, 420 N.W.2d 917, 920 (Minn. App. 1988), *review denied* (Minn. May 18, 1988); *Case*, 413 N.W.2d at 263.

I. Allan has not established a prima facie case of inadequate treatment.

States have long had the power "to civilly commit certain persons in narrow circumstances." *In re Linehan*, 594 N.W.2d 867, 872 (Minn. 1999) (citing *Kansas v.*

Hendricks, 521 U.S. 346, 357, 117 S. Ct. 2072, 2080 (1997)). Due process requires that the state have a constitutionally adequate purpose for the commitment and that the nature and duration of commitment be reasonably related to that purpose. *Foucha v. Louisiana*, 504 U.S. 71, 78-79, 112 S. Ct. 1780, 1784-85 (1992); *Jackson v. Indiana*, 406 U.S. 715, 738, 92 S. Ct. 1845, 1858 (1972). Minnesota has recognized two purposes for civilly committing SDPs and SPPs: (1) protection of the public and (2) rehabilitation of the patients. *In re Civil Commitment of Johnson*, 800 N.W.2d 134, 147 (Minn. 2011). Although rehabilitation through treatment often is "problematic," the state's interest in protecting the public "is no less legitimate and compelling." *In re Blodgett*, 510 N.W.2d 910, 916 (Minn. 1994). "So long as civil commitment is programmed to provide treatment and periodic review, due process is provided." *Id.*; *see also Johnson*, 800 N.W.2d at 147 n.9 (stating in response to Legislative Auditor's report that "the fact that the State may not have accomplished its objective of rehabilitating sexually dangerous persons does not negate the legitimacy of the State's interest in doing so").

Allan argues that he is being held in violation of his right to due process because MSOP does not provide adequate treatment.[2] The district court concluded that Allan "may" have a cognizable due-process claim based on indications in the Legislative Auditor's report that the MSOP population is not receiving adequate treatment but that Allan cannot obtain habeas relief as a matter of law because this claimed due-process violation does not undermine the validity of the underlying commitment judgment.

[2] Allen expressly waived various other constitutional arguments in his principal brief, stating that his "argument will be concentrating on his Due Process claim, instead of the Double Jeopardy and Ex Post Facto Clause claims."

Instead, the district court reasoned, Allan could seek relief by some other means aimed at ensuring proper treatment, rather than release.

We first consider whether Allan has established a prima facie case of inadequate treatment to support habeas relief. A person "may not assert his right to treatment until he is actually deprived of that treatment," *In re Martenies*, 350 N.W.2d 470, 472 (Minn. App. 1984), *review denied* (Minn. Sept. 12, 1984), and he may not render treatment inadequate by refusing it, *Blodgett*, 510 N.W.2d at 916. Argumentative assertions that treatment is inadequate are insufficient to warrant relief. *See Beltowski v. State*, 289 Minn. 215, 217, 183 N.W.2d 563, 564 (1971).

Allan's inadequate-treatment claim rests solely on concerns expressed in the Legislative Auditor's report about MSOP's treatment program. But the report considered the treatment records of less than 10% of the MSOP population and indicated that 21% of the population was refusing treatment. The report, standing alone, is insufficient to raise a fact issue as to the adequacy of treatment Allan has been afforded. And Allan does not assert that he personally has been deprived of treatment. To the contrary, the district court's indeterminate-commitment order indicates that Allan refused several aspects of treatment at MSOP and stated he will do "whatever it takes" to get out of MSOP but will not participate in sex-offender treatment. Allan does not disavow those statements in his habeas petition. In the absence of any evidence that Allan has engaged in the treatment

MSOP offers, we conclude that he has not established a prima facie case of inadequate treatment and therefore is not entitled to habeas relief based on his due-process claim.[3]

II. Allan has not made a prima facie showing that his indeterminate civil commitment constitutes cruel and unusual punishment.

The Eighth Amendment prohibits the infliction of "cruel and unusual punishments." U.S. Const. amend. VIII. While the language of the Eighth Amendment does not confine its scope to criminal prosecutions, its purpose is to limit the government's power to punish. *Austin v. United States*, 509 U.S. 602, 608-09, 113 S. Ct. 2801, 2804-05 (1993). The purpose of civil commitment is treatment of the committed person and protection of the public, not punishment. *Johnson*, 800 N.W.2d at 147; *see also Hendricks*, 521 U.S. at 368-69, 117 S. Ct. at 2085 (concluding that civil-commitment law is non-punitive when state "disavow[s] any punitive intent," segregates civilly committed individuals from prison populations, "recommend[s] treatment if such is possible," and permits release upon a showing that the individual is no longer dangerous or mentally impaired). Because civil commitment is not punitive, it does not violate the Eighth Amendment.

Allan contends that his commitment is punitive because it is indeterminate in duration and therefore disproportionate. We are not persuaded. "Far from any punitive objective, the confinement's duration is instead linked to the stated purposes of the commitment, namely, to hold the person until his mental abnormality no longer causes

[3] Allan's due-process claim fails because he did not establish a prima facie case of inadequate treatment. We therefore decline to address whether the habeas statute provides a remedy for inadequate-treatment claims.

him to be a threat to others." *Hendricks*, 521 U.S. at 363, 117 S. Ct. at 2083. As with the civil-commitment statute at issue in *Hendricks*, Minnesota's civil-commitment statutes provide for release when "the committed person is capable of making an acceptable adjustment to open society, is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision." Minn. Stat. § 253D.31 (Supp. 2013); *see also Hendricks*, 521 U.S. at 363, 117 S. Ct. at 2083. Allan does not assert that he satisfies these criteria or that he has been denied an opportunity to demonstrate that he satisfies these criteria. Accordingly, even if civil commitment were deemed to be punitive, we conclude that Allan has not presented a prima facie case of cruel and unusual punishment to support habeas relief.[4]

Affirmed.

[4] Allan separately contends he should have received an evidentiary hearing on his habeas petition. Because he failed to establish a prima facie case on any of his claims, no evidentiary hearing was required. *See Case*, 413 N.W.2d at 263.