STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0777

Randy Joseph McKinnon, petitioner,
Appellant,

vs.

Joan Fabian, Commissioner of Corrections,
Respondent.

Filed March 25, 2008
Affirmed
Kalitowski, Judge

Rice County District Court
File No. 66-CV-07-394

Randy Joseph McKinnon, OID #121690, MCF-Faribault, 1101 Linden Lane, Faribault, MN 55021 (pro se appellant)

Lori Swanson, Attorney General, Kelly S. Kemp, Assistant Attorney General, 900 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2128 (for respondent)

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

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

KALITOWSKI, Judge

Pro se appellant Randy Joseph McKinnon challenges the district court's order denying his petition for a writ of habeas corpus, arguing that (1) the Commissioner of Corrections (commissioner) lacked authority to order appellant to participate in chemical-

dependency treatment and discipline him for failing to do so; (2) the disciplinary hearing violated appellant's procedural due process rights; and (3) the imposed disciplinary sanction violated appellant's equal protection rights. We affirm.

D E C I S I O N

A writ of habeas corpus is a statutory remedy that allows prison inmates to seek "relief from imprisonment or restraint." Minn. Stat. § 589.01 (2006). We give great weight to the district court's findings when 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). But we review questions of law de novo. *State ex. rel. McMaster v. Benson*, 495 N.W.2d 613, 614 (Minn. App. 1993), *review denied* (Minn. Mar. 11, 1993).

I.

Appellant argues that the commissioner exceeded her authority by disciplining appellant for failing to participate in chemical dependency treatment mandated by the Department of Corrections (DOC). We disagree.

A party seeking appellate review of an agency decision "has the burden of proving that the agency has exceeded its statutory authority or jurisdiction." *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 375 (Minn. 1996). When an agency such as the DOC makes a decision that is within its area of expertise, the decision "enjoy[s] a presumption of correctness." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001). But we may reverse an agency's decision if it violates constitutional provisions, exceeds the agency's statutory authority, is unsupported by

substantial evidence, or is arbitrary and capricious. Minn. Stat. § 14.69 (2006); *In re Excess Surplus Status*, 624 N.W.2d at 277; *Johnson v. Comm'r of Health,* 671 N.W.2d 921, 923 (Minn. App. 2003). Substantial evidence is "1. [s]uch relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2. [m]ore than a scintilla of evidence; 3. [m]ore than some evidence; 4. [m]ore than any evidence; and 5. [e]vidence considered in its entirety." *White v. Minn. Dep't of Natural Res.,* 567 N.W.2d 724, 730 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997). An agency's conclusion is arbitrary and capricious if there is no rational connection between the facts and the agency's decision. *In re Excess Surplus Status,* 624 N.W.2d at 277.

The commissioner has broad statutory authority to establish reasonable rules and regulations regarding the employment, conduct, instruction, and discipline of inmates committed to the state's correctional facilities. Minn. Stat. §§ 241.01, subd. 3a(b); 244.04, subd. 2 (2006). And inmates committed to state facilities are expected to follow the offender disciplinary regulations (ODRs) promulgated by the DOC. *See* Minn. Stat. § 241.01, subd. 3a(b). Specifically, ODR 510 requires inmates to participate in and complete treatment programs as directed by the DOC; an inmate who violates this regulation is subject to up to 360 days of extended incarceration. *Id*. In addition, Minn. Stat. § 244.03 directs the commissioner to "provide appropriate mental health programs and vocational and educational programs with employment-related goals for inmates," and to "impose disciplinary sanctions on any inmate who refuses to participate in rehabilitative programs." Minn. Stat. § 244.03 (2006).

Here, the DOC administered a chemical-dependency assessment to appellant and, based on its findings, recommended that appellant complete intensive primary chemical-dependency treatment. The DOC relied on the following factors in recommending that appellant undergo treatment: (1) appellant's DSM IV criteria for chemical dependence; (2) appellant's chemical-use history; (3) appellant's chemical-dependency program intervention history; (4) the relationship between appellant's chemical use and his current and past offenses; (5) appellant's history of relapse; and (6) criminogenic factors as determined by the LSI-R.

Appellant claims that the assessment's reliance on a June 2003 presentencing investigation that appellant underwent while in custody for a different offense was unfair because he completed several chemical-dependency treatment programs since that time. But the DOC assessment articulated a number of reasons as to why appellant still needs treatment, and the record indicates that appellant admitted to the assessor that he did not want to stop using drugs and alcohol. Thus, it was reasonable and within the commissioner's statutory authority to require appellant to complete chemical-dependency treatment as part of his rehabilitation.

And as discussed above, the commissioner has explicit statutory authority to impose disciplinary sanctions on any inmate who refuses to participate in rehabilitative programs mandated by the DOC. Minn. Stat. § 244.03 (2006). The Minnesota Supreme Court has upheld the commissioner's right to penalize an inmate who refuses to undergo DOC-mandated treatment. *See State ex. rel. Morrow v. LaFleur*, 590 N.W.2d 787, 794-96 (Minn. 1999) (effectively overruled on other grounds), *cert. denied*, *Morrow v. Hvass*,

528 U.S. 1013 (1999). Here, there is no dispute that appellant failed to complete chemical-dependency treatment as ordered by the DOC. Accordingly, it was within the commissioner's authority to discipline appellant for failing to comply with the DOC's treatment directive.

II.

Appellant contends that the disciplinary hearing addressing his refusal to undergo DOC-mandated treatment violated his procedural due process rights. We disagree.

We make two inquiries when engaging in due process analysis: (1) "whether the complainant has a liberty or property interest with which the state has interfered," and (2) "whether the procedures attendant upon that deprivation were constitutionally sufficient." *Carrillo v. Fabian*, 701 N.W.2d 763, 768 (Minn. 2005). When an inmate is accused of a major prison violation, he is entitled to procedural due process in the ensuing disciplinary proceeding, including (1) advanced written notice of the claimed violation; (2) the right to present evidence and call witnesses at the hearing; and (3) the receipt of written findings from the hearing officer explaining the evidence and the reasoning that he relied upon in reaching his decision. *Wolff v. McDonnell*, 418 U.S. 539, 564-66, 94 S. Ct. 2963, 2979 (1974); *Hrbek v. Nix*, 12 F.3d 777, 780 (8th Cir. 1993). Accordingly, even though appellant here does not have a fundamental right to refuse treatment, he nonetheless has a protected liberty interest in his supervised release date. Thus, he must be afforded procedural due process before his incarceration can be extended. *See Carrillo*, 701 N.W.2d at 773.

Here, the record indicates that appellant was afforded notice of his violation and when his disciplinary hearing would be held. And the record shows that on November 1, 2006, a proper disciplinary hearing was held at which appellant was given the opportunity to present evidence and cross-examine the witness who testified against him. After finding appellant guilty of refusing DOC-mandated treatment in violation of ODR 510, the hearing officer issued written findings explaining his decision. The warden reviewed and affirmed the hearing officer's decision.

Appellant contends that he was "sentenced on the basis of assumptions concerning his criminal record which were materially untrue" and which rendered his hearing "inconsistent with due process of law." We disagree. The hearing officer had ample opportunity to weigh all of the evidence presented by the parties at the hearing. Appellant's disciplinary violation consisted of refusing DOC-mandated chemical-dependency treatment, and he admitted to that conduct. Moreover, appellant fails to articulate any defects in the disciplinary hearing that he was afforded. Based on this record, we conclude that the district court did not err in determining that appellant's procedural due process rights were satisfied.

III.

Appellant argues that his equal protection rights have been violated because other prisoners who pleaded guilty to violating ODR 510 have received lesser punishments than the 45 days of extended incarceration imposed on him. We disagree.

We generally decline to address issues on appeal that were not raised before the district court, regardless of their constitutional implications. *State v. Sorenson*, 441

N.W.2d 455, 457 (Minn. 1989). Because this equal protection argument was not raised in the habeas petition appellant submitted to the district court, it need not be addressed here.

But even if appellant's equal protection claim was not waived, his argument fails on the merits. A party bringing an equal protection challenge bears the burden of showing government action that results in "different punishments or different degrees of punishment for the same conduct committed under the same circumstances by persons similarly situated." *State v. Frazier*, 649 N.W.2d 828, 837 (Minn. 2002). Pursuant to ODR 510, an inmate who refuses to comply with a DOC treatment directive is subject to up to 360 days of extended incarceration.

Appellant argues that some prisoners who pleaded guilty to violating ODR 510 received lesser punishments than the 45-day extended incarceration imposed on him, and that he would have received only 30 days of extended incarceration had he pleaded guilty instead of exercising his right to a disciplinary hearing. But appellant has not offered any evidence regarding other inmates who were otherwise similarly situated. Because appellant has not shown that he committed the same act under the same circumstances as the inmates who allegedly received lesser punishment, and because the penalty imposed on appellant was within the hearing officer's authority, we conclude that appellant's right to equal protection was not violated.

Affirmed.