STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0896

Joseph Leander Rainer, petitioner,
Appellant,

vs.

Department of Corrections, MCF-Faribault, et al.,
Respondents Below,

Joan Fabian, Commissioner of Corrections,
Respondent.

Filed May 13, 2008
Affirmed
Shumaker, Judge

Rice County District Court
File No. 66-C1-05-002085

Bradford W. Colbert, Katie Felesina (certified student attorney), Legal Assistance to Minnesota Prisoners, 875 Summit Avenue, Room 254, St. Paul, MN 55105 (for appellant)

Lori Swanson, Attorney General, Margaret E. Jacot, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, MN 55101 (for respondent)

Considered and decided by Shumaker, Presiding Judge; Willis, Judge; and Ross, Judge.

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

SHUMAKER, Judge

On appeal from a denial of a petition for writ of habeas corpus, appellant challenges the district court's determination that the commissioner of corrections did not abuse her discretion by denying his request for parole. Appellant argues that his constitutional right to due process was violated and that the commissioner violated the separation-of-powers doctrine. Because we conclude that appellant was not deprived of his due process rights and that the district court did not abuse its discretion by denying his petition, we affirm.

FACTS

Appellant Joseph Leander Rainer, serving a life sentence in prison for murder, petitioned for a writ of habeas corpus to compel the commissioner of corrections to re-evaluate her decision to deny his request for parole. The district court denied the petition, and Rainer appealed.

Rainer was convicted of murder in the first degree on May 7, 1986, and was sentenced to imprisonment for life. The law in effect at that time provided that Rainer could be considered for release on parole only after serving a minimum of 17 years in prison. Thus, his parole eligibility date was May 2, 2003.

Before a life-term inmate may be considered for release on parole, an advisory panel chaired by the commissioner of corrections holds a pre-eligibility review hearing to determine either a projected release date or a date for future review of the possibility of parole. Minn. R. 2940.1800, subps. 1, 2 (2003). The panel is to consider the inmate's

case history, facts and circumstances of the offense for which sentence was imposed, criminal history, institutional adjustment, program team reports, and psychological or psychiatric reports. *Id.*, subp. 2. The commissioner is required to advise the inmate in writing within 30 days of the review of the decision to release or to postpone release. *Id.*, subp. 5. The writing must note the factors on which the decision was based and actions by the inmate that could cause a change in the projected release date or the date of further review. *Id.*

Rainer's first pre-eligibility review hearing was held on May 12, 2000. Commissioner of Corrections Sheryl Hvass did not set a projected release date but continued the matter for two years and set forth in writing her observations and actions for Rainer to undertake in the interim period.

Rainer's second pre-eligibility review hearing took place on April 11, 2002. Instead of setting a future parole release date after Rainer became eligible, Commissioner Hvass indicated that the matter would be continued for two more years. In addition to identifying actions Rainer was to perform and factors that the advisory panel considered in the review, Commissioner Hvass stated: "It's important that you also understand that this panel never releases an individual who has been sentenced to life after serving only the minimum number of years in prison . . . ."

Commissioner Joan Fabian, Hvass's replacement, and the advisory panel conducted a third review of Rainer's parole eligibility on May 25, 2004, about one year after he had served the minimum of 17 years in prison. Citing Rainer's "high level of internalized anger," his "blame-avoidant positions," and his taking "limited, if any,

responsibility" for his circumstances, including seeing himself as a victim and failing to work to resolve health issues, Commissioner Fabian advised Rainer that his incarceration would be continued for five years. She also stated: "As I told you at the hearing, 18 years is not enough time to account for the taking of a life regardless of one's program achievements and positive work evaluations."

Rainer alleged in his petition for a writ of habeas corpus that the quoted statements by the respective commissioners show the existence of an unwritten policy that life-term prisoners are never granted parole when they first become eligible. Rainer also alleged that Commissioner Fabian abused her parole discretion, and thereby denied Rainer due process, by applying that policy. The district court found no evidence of a binding policy of the nature Rainer alleged and denied the petition.

D E C I S I O N

Rainer contends on appeal that the commissioner of corrections violated his right to due process by endorsing and enforcing a policy that no life-term prisoner is to be released on parole, despite eligibility, after serving only the minimum time in prison, and that the district court erred by denying his petition for a writ of habeas corpus.

A writ of habeas corpus is a statutory civil remedy available "to obtain relief from imprisonment or restraint." Minn. Stat. § 589.01 (2006). "A writ of habeas corpus may also be used to raise claims involving fundamental constitutional rights and significant restraints on a defendant's liberty or to challenge the conditions of confinement." *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26-27 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006). To obtain a writ of habeas corpus, a petitioner must set forth "sufficient

facts to establish a prima facie case for his discharge." *State ex rel. Fife v. Tahash*, 261 Minn. 270, 271, 111 N.W.2d 619, 620 (1961). A habeas corpus hearing is not necessary when the petitioner has not alleged sufficient facts to constitute a prima facie case for relief. *Sanders v. State*, 400 N.W.2d 175, 176 (Minn. App. 1987), *review denied* (Minn. Apr. 17, 1987). This court gives "great weight to the [district] 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). But questions of law are reviewed de novo. *State ex rel. McMaster v. Benson*, 495 N.W.2d 613, 614 (Minn. App. 1993*), review denied* (Minn. Mar. 11, 1993).

The Minnesota Commissioner of Corrections has broad statutory authority to control both release and continued incarceration of individuals. Minn. R. 2940.1800, subp. 1 (2005); Minn. Stat. §§ 243.05, subd. 1, 244.05, subd. 5 (2006); *State v. Schwartz*, 628 N.W.2d 134, 138-39 (Minn. 2001). The commissioner has the authority to determine whether inmates serving life sentences should be released once they are eligible for parole. Minn. Stat. § 244.05, subds. 4, 5 (2006). Minnesota statutes provide that inmates serving a life sentence "may" be released after serving the minimum sentence. *Id.*, subd. 5(a). In determining whether parole is appropriate, the panel must take into consideration the inmate's "entire case history, including the facts and circumstances of the offense for which the life sentence is being served . . . institutional adjustment, program team reports, psychological and psychiatric reports where pertinent." Minn. R. 2940.1800, subp. 2 (2003).

Rainer argues that he is entitled to due process in the commissioner's consideration of parole and that, when the commissioner refused to exercise her discretion but rather simply followed a policy, she violated his right to due process. He does not challenge the other hallmarks of due process such as notice and opportunity to be heard. The "policy," he contends, is an unwritten one that provides that parole will not be granted to a life-term inmate who has served only the minimum time required for parole eligibility. As evidence of the "policy," Rainer points to Commissioner Hvass's pre-eligibility statement that the advisory panel "never releases" an inmate who has served only the minimum time in prison, and to Commissioner Fabian's statement after Rainer had become eligible for parole that "18 years is not enough time to account for the taking of a life regardless of one's program achievements and positive work evaluations."

The district court found that these statements in context negate the inference that a policy exists to deny parole to eligible inmates. The court noted that Commissioner Hvass's statement included factors beyond any alleged "policy" that were appropriate to consider and an indication that Rainer's case was "not so exceptional that it warrants an exception to this factor of accountability time." Similarly, the court pointed out that Commissioner Fabian's statement can be "interpreted as an account of the circumstances of [Rainer's] offense." We note also that Commissioner Fabian listed various factors that were proper to consider in parole determinations.

At oral argument, Rainer suggested that we apply a de novo standard of review and, in his brief, he cites authority for de novo review of questions of law. But there is no question of law before us. Rather, the question is whether the district court's finding that

the commissioner did not abuse her parole discretion was clearly erroneous. *State v. Morse*, 398 N.W.2d 673, 677 (Minn. App. 1987), *review denied* (Minn. Feb. 18, 1987).

If the commissioner followed an intractable policy to deny parole to all eligible prisoners after they served only the minimum time in prison, or if the commissioner relied on impermissible reasons in denying parole, the commissioner would thereby abuse her discretion.

Rainer concedes the commissioner's broad discretion in determining parole but argues that she failed to consider the totality of the circumstances of his case and instead followed an impermissible policy. If we read the respective statements of the commissioners in isolation, Rainer's conclusion is plausible. But both statements appear in contexts in which several legitimate bases for denial of parole are set forth. The commissioners acknowledged Rainer's accomplishments while in prison but found that he had not adequately addressed his issues of anger, blame, and personal responsibility. These negative factors were as much a part of the totality of the circumstances as were the positive factors, and it is clear that each commissioner took both the positive and the negative into consideration. Rainer does not dispute the findings as to the negatives, or that such negatives are within the commissioner's discretion to consider in parole decisions.

What then is to be made of Commissioner Hvass's "never" statement and Commissioner Fabian's "not enough time" statement? Because Commissioner Hvass qualified her statement with an indication that "exceptional" cases might be viewed differently, we cannot conclude that the statement evinced the type of intractable policy

that would, if followed, be an abuse of discretion. Commissioner Fabian's statement turns on the meaning of the word "one's," when she said that 18 years is not enough time "regardless of one's . . . achievements and . . . evaluations." At the very least, it is ambiguous as to whether she meant Rainer when she used that term or intended it more broadly to apply to all prisoners. The district court, relying on the context of the statement, found that the commissioner's use of the term did not demonstrate a broad policy. That was a plausible interpretation by the district court and was not clearly erroneous.

Rainer makes two other arguments on appeal. First, he contends that he should have been granted an evidentiary hearing on his habeas corpus petition. But he never requested an evidentiary hearing. The court could not err by failing to grant a hearing that a petitioner never asked for. Rainer claims that such a request was implicit in his petition when he requested "such other relief" as the court might grant. We reject the notion that this catchall phrase signaled to the court that Rainer desired an evidentiary hearing.

Rainer's second argument is that the commissioner's policy of refusing to release eligible inmates on parole after they have served the minimum time in prison violates the separation-of-powers doctrine because it usurps a legislative function. Because we have held that Rainer has failed to show the existence of such a policy, we need not address the argument further.

Affirmed.