STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1291

Seraphina Richards, petitioner,
Appellant,

vs.

Joan Fabian,
Respondent.

Filed June 10, 2008
Affirmed
Hudson, Judge

Scott County District Court
File No. 70-CV-07-9283

Seraphina W. Richards, P.O. Box 494, Grand Rapids, Minnesota 55744 (pro se appellant)

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

Considered and decided by Toussaint, Presiding Judge; Lansing, Judge; and Hudson, Judge.

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

HUDSON, Judge

Appellant challenges, by writ of habeas corpus, the commissioner of the Department of Corrections' determination that her confinement should be extended for 20 days after a finding that appellant made false allegations against a prison staff member. Appellant argues that the commissioner improperly charged her with the

offense without corroborating evidence, used the wrong standard to evaluate the evidence, and denied her due process. She also argues that the discipline constituted cruel and unusual punishment, that she was entitled to a district court evidentiary hearing, and that the district court erred when it did not allow her to submit a reply to the state's return of the writ. Because appellant's arguments lack merit, we affirm.

FACTS

Appellant Seraphina Richards was sentenced to 300 months in the custody of the Minnesota Commissioner of Corrections after she pleaded guilty to second-degree murder in 1990. Between 1991 and 2005, while incarcerated, appellant was disciplined for numerous infractions of offender discipline regulations (ODRs), including ODR 240, "Lying and Misrepresentation," which prohibits false oral or written statements made to mislead another person or misrepresent a fact.

In January 2006, appellant told Department of Corrections (DOC) investigators that a staff member at the Minnesota Correctional Facility at Shakopee had sexually abused and harassed her. The Shakopee Police Department investigated the allegations and declined to file charges. A DOC internal investigation found no reason to charge the staff member with sexual misconduct. The DOC charged appellant with two infractions of lying and misrepresentation.

At a disciplinary hearing, the staff member and four other witnesses testified in support of the staff member's version of events. Appellant testified and presented one witness, who testified that appellant had told her about the abuse. The hearing officer denied appellant's request to present additional witnesses to testify that appellant had told

them about the abuse. The hearing officer found that appellant had violated ODR 240 and that she had submitted no direct evidence to support the truth of her allegations. The officer imposed discipline of 60 days' segregation and 20 days' extended incarceration, with an additional 15 days' segregation for an offensive remark made by appellant at the close of the hearing.

Appellant filed an appeal to the prison warden that was denied. After serving the extended incarceration time, appellant was placed on supervised release. She violated the terms of her release by failing to abide by house arrest; her release plan was restructured, and she was allowed to continue supervision in the community but was required to begin the second phase of intensive supervised release again.

Appellant filed a petition for writ of habeas corpus in district court, alleging that the disciplinary proceedings denied her due process and that her discipline for the rule violation constituted cruel and unusual punishment. The district court denied the petition without an evidentiary hearing, determining that appellant had not met her burden to show the illegality of her detention, that the commissioner had acted lawfully, that appellant's constitutional rights were not violated, and that the petition was moot because appellant had already served the extended-incarceration time.

Appellant filed this appeal, which the commissioner moved to dismiss as moot. This court denied the motion, determining that Minn. Stat. § 244.05, subd. 2 (2006), gives the commissioner broad authority to place an offender on intensive supervised release "for all or part of the inmate's supervised release or parole term," and the commissioner was not precluded from considering the disciplinary findings in

determining whether to retain appellant on intensive supervised release or remove her from intensive supervised release.

D E C I S I O N

A writ of habeas corpus is a statutory civil remedy that is available "to obtain relief from [unlawful] imprisonment or restraint." Minn. Stat. § 589.01 (2006). A writ of habeas corpus is also available to raise claims involving constitutional rights and significant restraints on a defendant's liberty, or to challenge conditions of confinement violating protected legal interests. *See, e.g.*, *Kelsey v. State*, 283 N.W.2d 892, 895 (Minn. 1979) (stating that habeas corpus is available to test claims that prison conditions constitute cruel and unusual punishment). A petitioner has the burden to prove the illegality of the detention. *Loyd v. Fabian*, 682 N.W.2d 688, 690 (Minn. App. 2004), *review denied* (Minn. Oct. 19, 2004).

Appellate courts give great weight to the district court's findings in considering a petition for habeas corpus and will sustain those 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). Questions of law are subject to de novo review. *State ex rel. McMaster v. Benson*, 495 N.W.2d 613, 614 (Minn. App. 1993), *review denied* (Minn. Mar. 11, 1993).

I

The Minnesota legislature has directed the commissioner to adopt rules governing inmate discipline. *See* Minn. Stat. § 244.04, subd. 2 (2006). One rule adopted by the DOC, ODR 240, prohibits offenders from "mak[ing] a false written or oral statement about a staff member." An offender may be charged under ODR 240 if it is determined that the offender has submitted "a frivolous or malicious claim, testified falsely, or submitted false evidence." ODR 240. ODR 240 requires that the facility "must possess evidence corroborating the staff member's report in order to charge the offender under this rule" if the complaint is protected under state and federal law. *Id.*

Appellant argues that the commissioner did not properly charge her under ODR 240 because the commissioner lacked the required evidence to corroborate the staff member's report. But the reports of the Shakopee police and the department investigation satisfy this requirement. Based on those reports, the police declined to file charges, and the DOC found no reason to charge the staff member with harassment. Therefore, appellant was properly charged with violating ODR 240.

Appellant also maintains that the hearing officer at the disciplinary hearing used the wrong standard to evaluate the evidence. The Minnesota Supreme Court has held that the DOC must use the "preponderance of the evidence" standard rather than a "some evidence" standard in disciplinary proceedings that extend an inmate's incarceration. *Carrillo v. Fabian*, 701 N.W.2d 763, 777 (Minn. 2005). The hearing officer did not expressly find by a preponderance of the evidence that appellant committed a disciplinary violation. But his findings state that the staff member "testified clearly and

unequivocally that he did not sexually abuse or otherwise harass" appellant, and that appellant "presented no direct evidence to support the veracity of her verbal and written assertions." These findings adequately reflect the hearing officer's consideration of the preponderance of the evidence standard. There was no error in the standard used to consider appellant's disciplinary violation.

II

Appellant alleges that the disciplinary process violated her due-process rights. A Minnesota inmate has a "protected liberty interest in [that inmate's] supervised release date that triggers a right to procedural due process before that date can be extended." *Carrillo*, 701 N.W.2d at 773. When protected interests are implicated, prison authorities must provide an appropriate level of due process. *Id*. at 768. In a prison disciplinary proceeding, inmates are entitled to procedural due-process requirements of written notice of the violation 24 hours before the hearing; the opportunity to present and call witnesses if it will not jeopardize institutional safety or correctional goals; and a written statement from an impartial decisionmaker explaining the evidence and the reasoning relied on for the disciplinary action. *Wolff v. McDonnell*, 418 U.S. 539, 563–67, 94 S. Ct. 2963, 2978–80 (1974); *Hrbek v. Nix*, 12 F.3d 777, 780 (8th Cir. 1993).

Appellant claims that prison authorities improperly denied her pre-hearing request to view the documentary evidence supporting the charges against her. But she does not dispute that she received written notice of the claimed violation 24 hours before the hearing and was given copies of the evidence for use in preparing her appeal. This satisfies the applicable due-process requirement. *See Hrbek*, 12 F.3d at 780.

Appellant asserts that she was denied the opportunity to present more than one witness to testify that appellant told them about the alleged abuse. But a hearing officer has "broad discretion to reject an inmate's request [to call witnesses] for institutional security reasons, to prevent the undermining of prison authority, to foster correctional goals, to exclude irrelevant or unnecessary testimony, or testimony which could create a risk of reprisal." *Brown v. Frey*, 889 F.2d 159, 167 (8th Cir. 1989). Appellant has failed to show how the hearing officer abused his discretion in excluding this cumulative additional testimony.

Appellant also argues that the hearing officer and the staff representative assigned to her would not let her finish her line of questioning at the hearing. Specifically, appellant claims she was prevented from introducing circumstantial evidence of alleged "lies" placed in her mental-health file. But to support a claim for relief, allegations must be "more than argumentative assertions without factual support." *Beltowski v. State*, 289 Minn. 215, 217, 183 N.W.2d 563, 564 (1971). Appellant offered no specific evidence, other than her own assertions, that would tend to establish the existence of any inaccuracies in her mental-health file.

Appellant challenges the hearing officer's decision to impose an additional 15 days' segregation for contempt based on an offensive remark appellant made after the findings were announced. And she asserts that she was improperly denied privileges when she was in a segregated unit. But these arguments relate to appellant's custody status, and this court has previously rejected the argument that a custody-status classification implicates a liberty interest that would support a constitutional challenge.

See State ex rel. McMaster v. Young, 476 N.W.2d 670, 674 (Minn. App. 1991) (holding that an inmate has no liberty interest in his or her custody-status classification), *review denied* (Minn. Dec. 13, 1991).

The record shows that appellant was afforded the applicable due-process rights of timely notice of the alleged violation, an opportunity to present relevant testimony, and a written statement from an impartial decisionmaker explaining the evidence and reasoning for the disciplinary action. No due-process violation occurred.

III

Appellant argues that the discipline she received amounted to cruel and unusual punishment. Habeas corpus is an appropriate remedy if a petitioner can establish present and continuing mistreatment amounting to cruel and unusual punishment. *State ex rel. Crosby v. Wood*, 265 N.W.2d 638, 639 (Minn. 1978). Prison conditions constitute cruel and unusual punishment if they involve the wanton and unnecessary infliction of pain, appear disproportionate to the crime for which the inmate is incarcerated, or deny innate basic human needs. *Rhodes v. Chapman*, 452 U.S. 337, 347, 101 S. Ct. 2392, 2399 (1981). Eighth Amendment liability requires "more than ordinary lack of due care for the prisoner's interests or safety." *Whitley v. Albers*, 475 U.S. 312, 319, 106 S. Ct. 1078, 1084 (1986).

Appellant maintains that DOC officials violated her Eighth Amendment rights by failing to provide her counseling, placing her in segregation for eight days without credit for time served, ordering her not to discuss her case with anyone while in segregation, and denying her requests for certain personal items. These actions do not rise to the level

of cruel and unusual punishment. *See Crosby*, 265 N.W.2d at 639 (affirming summary denial of petition when inmate claimed severe and unjustifiable beating by prison guards violated Eighth Amendment rights, on ground that beating was not part of course of mistreatment and was not likely to recur).

IV

Appellant argues that the district court improperly denied her petition without an evidentiary hearing. In habeas corpus proceedings, an evidentiary hearing is required "only if a factual dispute is shown by the petition." *Seifert v. Erickson*, 420 N.W.2d 917, 920 (Minn. App. 1998), *review denied* (Minn. May 18, 1988). The petitioner must "set forth in his petition 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). The district court did not err by denying appellant's request for an evidentiary hearing when appellant's petition relied only on her assertions and failed to present a factual dispute requiring a hearing.

Finally, appellant maintains that the district court erred by denying her request to submit a reply to the commissioner's return of the petition. The statute that sets forth the requirements for written submissions in habeas corpus proceedings, Minn. Stat. § 589.12 (2006), provides that "[i]mmediately after the return of the writ, the judge . . . shall examine the facts set forth in the return, the cause of the imprisonment or restraint, and whether the cause was upon commitment for a criminal charge or not." Because the applicable statute does not provide for a written reply to the return of the writ, appellant was not entitled to submit such a reply.

Affirmed.