STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1105

Gregory Wendall Weston, petitioner,
Appellant,

vs.

Joan Fabian, Commissioner of Corrections, et al.,
Respondents.

Filed April 20, 2010
Affirmed
Stoneburner, Judge

Chisago County District Court
File No. 13CV08764

Gregory Wendall Weston, Rush City, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Margaret Jacot, Assistant Attorney General, St. Paul, Minnesota (for respondents)

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and Ross, Judge.

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

STONEBURNER, Judge

Appellant challenges the district court's dismissal of his petition for a writ of habeas corpus, arguing that the Minnesota Department of Corrections violated his due-process rights by denying him the opportunity to present evidence at his revocation

hearing and denying him the opportunity to appeal from the revocation decision. We affirm.

FACTS

Appellant Gregory Wendall Weston was committed to the Department of Corrections (DOC) in 2000 for 36 months and a ten-year conditional-release period as a result of his conviction of third-degree criminal sexual conduct. Weston began intensive supervised release in April 2002. His release was restructured in May 2002 and again in December 2005 due to Weston's failure to complete sex-offender treatment. Weston was ordered to take the actions necessary to return to sex-offender treatment, which included a psychiatric evaluation and following all recommendations resulting from the evaluation. Weston scheduled an appointment for the evaluation but allegedly refused to sign a requested release of his sex-offender treatment records. The sex-offender program ultimately concluded that Weston was not taking his sex offenses seriously and refused to readmit Weston to treatment. In March 2006, Weston's probation and parole agent filed a case report alleging that Weston had failed to comply with the conditions of release by failing to complete sex-offender treatment and recommended that Weston's release be revoked.

A hearing officer (HO) from the DOC Hearings and Release Unit (HRU) conducted a revocation hearing on April 11, 2006. Weston was represented by counsel at the hearing. Weston denied that he had declined to sign a release form and presented the results of the psychiatric evaluation that was conducted without his sex-offender treatment records. The evaluating psychiatrist stated that he would have preferred more

background information but tentatively concluded that Weston did not have any psychological disorders.

Based, in part, on the testimony of Weston's therapist at the sex-offender program that Weston had refused to sign the requested release form, was not serious about treatment, and was "playing games," the HO found that Weston was unamenable to supervised release and was a risk to the public. The HO assigned 365 days of accountability time, and ordered Weston to complete sex-offender treatment and remain discipline free while incarcerated.

DOC Policy 106.140 provides that an offender may appeal an HO's revocation decision by sending a letter to the Executive Officer (EO) of the HRU within 30 days of the offender's receipt of the decision. On April 26, 2006, Weston's attorney made an email request to the DOC for audio recordings of the hearing to prepare for the administrative appeal. The attorney made a second request for the recordings on May 5, 2006, stating that he wanted to file a timely appeal, but would wait "a bit" for the recordings so long as the EO would still accept the appeal as timely. He did not formally request an extension of the time for appeal, and the record does not reflect that an extension was granted. Weston's administrative-appeal letter was sent to the EO on June 2, 2006. The EO responded on July 10, 2006, denying the appeal as untimely.

In December 2006, because Weston declined to participate in sex-offender treatment while incarcerated, he was assigned up to 365 days of additional accountability time, with his release date to be reviewed if he completed treatment before his projected release date. Shortly thereafter, Weston, who had not entered treatment, asked that his

release date be assigned as the date of the expiration of his sentence. His request was granted: expiration of his sentence is scheduled to occur on approximately April 25, 2012, but Weston could be released earlier if he completes treatment.

In July 2008, Weston petitioned for a writ of habeas corpus, challenging the initial revocation of his release and arguing that the EO's denial of his administrative appeal violated his due-process rights. The district court granted a hearing on the limited issue of whether Weston's due-process rights were violated by denial of his administrative appeal. While the writ was pending, the EO reviewed Weston's file and affirmed that the appeal was untimely, and also concluded that Weston's challenge to revocation failed on the merits because Weston had not presented any persuasive information that would warrant reversal of the revocation.

After a hearing on Weston's petition for a writ of habeas corpus, the district court denied the writ, concluding that Weston's administrative appeal was not timely and that even if the appeal had been timely filed, Weston did not have a right to an administrative appeal protected by the due-process clause of the Fourteenth Amendment to the United States Constitution. This appeal followed.

D E C I S I O N

A writ of habeas corpus is a statutory civil remedy available to obtain relief from unlawful imprisonment or restraint. Minn. Stat. § 589.01 (2008). An offender may seek review of a revocation of release by petitioning the district court for a writ of habeas corpus. *See State v. Schwartz*, 628 N.W.2d 134, 141 n.3 (Minn. 2001) (noting that a writ of habeas corpus provides judicial review of a release-revocation decision where the

district court determines a hearing is warranted). In reviewing a district court's decision on a habeas corpus petition, this court gives "great weight to the district court's findings . . . and will uphold the findings if they are reasonably supported by the evidence." *Nw. v. LaFleur*, 583 N.W.2d 589, 591 (Minn. App. 1998), *review denied* (Minn. Nov. 17, 1998). Whether a due-process violation has occurred presents a question of constitutional law that we review de novo. *See State v. Bobo*, 770 N.W.2d 129, 139 (Minn. 2009) (stating that questions of constitutional law are reviewed de novo).

I. Weston received all process due at his revocation hearing.

Respondent commissioner of corrections concedes that *Morrissey v. Brewer* holds that the United States Constitution requires that before an offender's supervised release is revoked, the offender must be provided with due process in the form of (1) written notice of the claimed violation; (2) disclosure of evidence against him; (3) the opportunity to be heard in person and present witnesses and documentary evidence; (4) the right to confront and cross-examine adverse witnesses (except when there is good cause for not allowing confrontation); (5) a neutral, detached hearing body; and (6) a written statement by the factfinders as to the evidence relied on and the reasons for revocation. 408 U.S. 471, 489, 92 S. Ct. 2593, 2604 (1972).

Weston argues that he was denied due process at the revocation hearing because the HO was biased and because he was denied the opportunity to present a key piece of evidence. Weston's basis for asserting bias is his allegation that the DOC, on administrative appeal, has never reversed a revocation, and does not, in fact, provide for independent review of revocation decisions. But all of these allegations relate to the EO

who handles administrative appeals. Weston makes no allegation that the HO was biased. Therefore there is no merit in the allegation that his initial hearing did not take place before a neutral hearing officer. Furthermore, Weston's assertions do not constitute evidence of the EO's bias. *See State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 28 (Minn. App. 2006) (stating that the fact that a hearing officer decided against Guth does not alone show bias against him, and citing *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986) for the proposition that prior adverse rulings do not constitute bias), *review denied* (Minn. Aug. 15, 2006).

Weston argues that he was precluded from introducing a "certificate of completion" of sex-offender treatment at the revocation hearing. But the record does not reflect any attempt by Weston or his attorney to offer such a document or an exclusion of Weston's proffered evidence. It appears that the gravamen of Weston's claim is that, at the time of revocation, he had completed the treatment portion of the sex-offender program in which he was enrolled and that he was not readmitted to the aftercare portion of the program. Respondent correctly asserts that documentation showing that Weston had completed a portion of the program would not have affected the outcome of the revocation hearing because the conditions of his release specified that he had to complete all sex-offender programming, including aftercare. Weston has failed to prove that he was precluded from introducing any relevant evidence at his revocation hearing. Weston received all process due with regard to his revocation hearing.

Because we have reviewed Weston's claims related to his revocation hearing and have found them to be without merit, we do not reach his claim that the district court

erred by limiting the scope of the hearing on his habeas corpus petition to the issue of his administrative appeal from the revocation decision.

II. Denial of Weston's administrative appeal did not violate his right to due process.

Weston also argues that he had a due-process right to an administrative appeal of his revocation and that denial of that appeal denied him due process. We disagree. Neither *Morrissey* nor any other authority cited by Weston requires that an offender be provided the opportunity for an administrative appeal of a revocation hearing decision. The district court correctly concluded that there is no liberty-based procedural-due-process right to an administrative appeal of a revocation decision. The fact that the DOC's policies provide for such an appeal does not create a due-process entitlement to an appeal. And the record establishes that the DOC complied with its administrative-appeal policy by denying the appeal as untimely. The record is undisputed that the appeal was untimely and that Weston's attorney did not request an extension of the appeal period. Furthermore, after Weston filed the writ of habeas corpus, the EO reviewed his records and considered Weston's appeal on the merits. Weston received more consideration than required by DOC's policies. Even if this court had determined that Weston was entitled to an internal review of the revocation on the merits, that review has occurred and there is no additional remedy that could be ordered.

Affirmed.