STATE OF MINNESOTA
IN COURT OF APPEALS
A10-231

Frank Edward Johnson, petitioner,
Appellant,

vs.

Joan Fabian,
Commissioner of Corrections,
Respondent.

Filed September 14, 2010
Affirmed
Peterson, Judge

Anoka County District Court
File No. 02-CVC-09-7045

Frank E. Johnson, Rush City, Minnesota (pro se appellant)

Krista J. Guinn Fink, St. Paul, Minnesota; and

Lori Swanson, Attorney General, Kelly S. Kemp, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Toussaint, Chief Judge; Peterson, Judge; and Willis, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

PETERSON, Judge

This pro se appeal is from a district court order denying appellant's petition for a writ of habeas corpus. We affirm.

FACTS

Appellant Frank Edward Johnson is currently serving a 58-month sentence for his 2003 convictions of first-degree burglary, fifth-degree assault, and third-degree criminal sexual conduct. In a series of habeas petitions, appellant has raised substantially identical challenges to two decisions by the Minnesota Department of Corrections (DOC) that revoked his supervised release, assigned him 365 days of accountability time for the violation, and imposed an additional 365 days for failure to complete chemical-dependency treatment as ordered.

In an order filed on July 31, 2009, the district court denied appellant's first petition for habeas relief; appellant attempted, but failed, to perfect an appeal from that order. *See Johnson v. Fabian*, No. A10-95 (Minn. App. Jan. 20, Feb. 10, 2010) (orders dismissing appeal and denying motion to reinstate). In this appeal, appellant challenges the district court's December 21, 2009 order denying his second habeas petition. The district court denied appellant's second petition on res judicata grounds, noting that appellant's claims were either specifically rejected by the district court in its July 31, 2009 order denying

appellant's first petition or that appellant could have raised his claims in that petition but failed to do so.[1]

D E C I S I O N

Minnesota cases have long applied res judicata to successive and serial petitions for habeas corpus relief. *See Thompson v. Wood*, 272 N.W.2d 357, 358 (Minn. 1978) (affirming denial of habeas petition on res judicata grounds, when petitioner sought to relitigate issues previously decided against him, when petitioner failed to file timely appeal from previous order, and when current petition merely attempted to cure that procedural defect). Res judicata applies when (1) there was a final decision on the merits in a prior case; (2) the two cases involved identical parties; (3) the estopped party had a full and fair opportunity to litigate the matter; and (4) the earlier claim involved the same set of factual circumstances. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004). Res judicata is intended to preclude successive actions involving the same set of factual circumstances. *Hauser v. Mealey*, 263 N.W.2d 803, 807 (Minn. 1978).

Res judicata applies equally to claims actually litigated and to claims that could have been litigated in the earlier action. *State v. Joseph*, 636 N.W.2d 322, 327 (Minn. 2001). The application of res judicata is a question of law that is reviewed de novo. *Hauschildt*, 686 N.W.2d at 840.

Appellant raises claims of due-process violations and jurisdiction that were addressed and rejected by the district court when it denied his first habeas petition. He

[1] This court recently affirmed the district court's denial of appellant's third and fourth petitions for writs of habeas corpus. *Johnson v. Neisen*, No. A10-597 (Minn. App. July 13, 2010).

also challenges the requirement that he complete chemical-dependency treatment (imposed by the DOC in its March 2, 2009 Hearings and Release Unit (HRU) decision) and the assignment of an additional 365 days for failing to complete chemical-dependency programming (imposed by the DOC in a June 8, 2009 HRU decision). These claims were not specifically raised in appellant's first petition or addressed by the district court in its July 31, 2009 order.

Nevertheless, it appears that the claim involving the treatment directive imposed in the March 2, 2009 HRU decision could have been raised in appellant's first petition. But any challenge to imposition of an additional 365 days for failing to complete treatment arguably could not have been raised in appellant's first habeas petition, which was filed on March 12, 2009, several months before the DOC's June 8, 2009 HRU decision.

Even if res judicata does not apply to these claims, appellant's current challenges to chemical-dependency programming (TRIAD) are without merit. Appellant argues that when his release was revoked on March 2, 2009, he was directed to complete TRIAD programming, "despite having completed a similar program while on Wisconsin supervision that the hearing officer stated that there was no proof of appellant completing." Appellant's completion of a program in Wisconsin before his November 2008 violation for consuming alcohol[2] does not establish that the DOC had no authority in March 2009 to require him to complete additional chemical-dependency programming.

[2] Appellant did not include a copy of the certificate of completion for the Wisconsin program in his submissions in this proceeding, but a copy was included in his submissions in *Johnson v. Neisen*, Nos. A10-597, A10-598. The certificate indicates that appellant completed the program on August 19, 2008.

Appellant further argues that the DOC violated his rights by giving him an additional 365 days after he was terminated from the TRIAD program for refusing to admit to his chemical-dependency problems while his habeas proceedings were pending. But appellant's conviction became final long ago, and the requirement that he admit to his problems in order to participate in chemical-dependency treatment is not a violation of his constitutional rights. *See Johnson v. Fabian*, 711 N.W.2d 540, 542-43 (Minn. App. 2006) (holding that TRIAD program did not compel appellant to admit to offenses he was appealing, and appellant had other reasons for resisting treatment, including that he did not feel he had a drug problem or that he needed treatment), *aff'd*, 735 N.W.2d 295 (Minn. 2007). Moreover, the requirement that appellant complete TRIAD programming and the assignment of an additional 365 days for failing to do so were permitted sanctions in this case. *See State v. Schwartz*, 628 N.W.2d 134, 138-39 (Minn. 2001) (DOC has broad authority to reimprison offender for violation of terms of release); Minn. R. 2940.3800 (2007) (DOC has authority to assign reimprisonment for "up to expiration of the sentence" if "repeated violations of the conditions of release occur and the releasee is determined to be unamenable to supervision").

Because the claims in appellant's second habeas petition either were or could have been litigated in appellant's first habeas proceeding or are otherwise without merit, we affirm the district court's order dismissing appellant's second petition for a writ of habeas corpus.

Affirmed.