STATE OF MINNESOTA
IN COURT OF APPEALS
A10-646

Mark W. Latimer, petitioner,
Appellant,

vs.

Joan Fabian, Commissioner of Corrections,
Respondent.

Filed October 12, 2010
Affirmed
Toussaint, Chief Judge

Chisago County District Court
File No. 13-CV-09-1548

Mark W. Latimer, Rush City, MN (pro se appellant)

Lori Swanson, Attorney General, Kelly S. Kemp, Assistant Attorney General, St. Paul, Minnesota; and

Krista J. Guinn Fink, St. Paul, MN (for respondent)

Considered and decided by Toussaint, Chief Judge; Schellhas, Judge; and Muehlberg, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

TOUSSAINT, Chief Judge

In this habeas appeal, pro se appellant Mark W. Latimer claims that the Minnesota Department of Corrections (DOC) lost jurisdiction over him when it released him to federal custody, that his conditional-release term has expired, that the terms of his plea bargain were violated when he was civilly committed, and that his revocation hearing was unfair. Because appellant's claims are without merit, we affirm.

FACTS

Appellant was convicted in 2001 of two counts of second-degree criminal sexual conduct, sentenced to consecutive terms of 33 and 21 months in prison, and given a ten-year conditional-release term. Upon completion of his terms of imprisonment in 2004, appellant was placed on intensive supervised release and transferred to federal custody because of a prior federal parole violation. After serving time on his federal charge, appellant was transferred to the Minnesota Sex Offender Program (MSOP) pursuant to a court order issued as part of a civil-commitment proceeding.

In May 2009, while he was still on intensive supervised release and while residing at an MSOP facility, appellant became involved in an incident with MSOP staff in which he threatened to "butcher" staff if he was not allowed to watch television in the day room, lunged at staff, and struck a security officer. Following a hearing before a DOC hearings and release unit officer, appellant's intensive supervised release was revoked until his sentence expires in 2014. Appellant thereafter filed a petition for a writ of habeas corpus challenging the DOC's decision.

In his petition, appellant claimed that the DOC lost legal custody and jurisdiction over him in 2004, when he was released from state custody and turned over to the United States Marshal for federal parole violations. He asserted that his time with the DOC, including his conditional release, "should have ended . . . with [his] release to the U.S. Marshals and [their] detainer." Appellant also argued that the terms of his plea agreement were violated when a petition seeking to civilly commit him was filed.

On appeal, appellant continues to challenge the DOC's jurisdiction over him and seeks to avoid his conditional-release term and his civil-commitment proceedings. He also challenges, for the first time on appeal, the fairness of his revocation hearing. In correspondence to this court, appellant requests appointment of counsel on appeal.

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). Appellant's main argument appears centered on his claim that the DOC lost jurisdiction over him when it released him to federal authorities in 2004. Appellant's 2001 sentence included a ten-year conditional-release term under Minn. Stat. § 609.109, subd. 7(a) (2000). Appellant was released from prison after serving two-thirds of his sentence in 2004, but the DOC continues to have jurisdiction or legal custody over him until the expiration of his conditional-release term. *See* Minn. Stat. § 243.05, subd. 1(b) (2008) ("Upon being paroled and released, an inmate is and remains in the legal custody and under the control of the commissioner . . . ."); *State v. Schwartz*, 628 N.W.2d 134, 138-39 (Minn. 2001) (holding that offender on supervised release remains in state's legal custody and is

subject to reimprisonment for breach of condition of release); *In re Ivey*, 687 N.W.2d 666, 670 (Minn. App. 2004) (holding that district court had personal jurisdiction over appellant, who was imprisoned in Germany, for purposes of civil-commitment proceedings, because DOC maintained supervisory power over him while he was serving ten-year conditional-release term of his sentence), *review denied* (Minn. Dec. 22, 2004).

Appellant's ten-year conditional-release term did not begin to run until January 2004, when he was released to federal authorities, and is set to expire in January 2014. This court recently explained that periods of supervised release are included *within* the sentence duration pronounced, whereas periods of conditional release *follow* completion of the sentence imposed. *State ex rel. Peterson v. Fabian*, 784 N.W.2d 843, 845 (Minn. App. 2010). The ten-year conditional-release term in this case followed completion of appellant's imposed state sentence, and the DOC appears to have properly calculated appellant's conditional-release term.

As support for his argument that the DOC lost jurisdiction over him in 2004 when he was turned over to federal authorities, appellant cites a number of cases from other jurisdictions and several federal statutes that do not apply to the situation presented here. Appellant suggests that his plea agreement has been violated in some way.

The record in this case does not include specific information on appellant's plea agreement. But in his habeas petition, appellant acknowledges that he was initially given a stayed sentence, that it was later discovered that he was under a federal parole-violation warrant and the federal marshals had placed a detainer on him, and that he was then sent to prison. This comports with his claim that his original plea agreement contemplated a

five-year conditional-release term (which was the term applicable to first-time sex offenders) but that at sentencing the district court imposed a ten-year conditional-release term (which was the term applicable to repeat sex offenders). Because appellant's original plea agreement was likely based on the mistaken assumption that he did not have any prior sex offenses, there could have been no valid agreement to serve the state and federal sentences concurrently. There could have been no enforceable agreement to impose a five-year conditional-release term.

Appellant also argues that his plea agreement was violated when he was committed to MSOP because it was agreed that no new charges would be brought against him. But similar arguments made in civil-commitment proceedings have been rejected by this court. *See, e.g.*, *In re Kunshier*, 521 N.W.2d 880, 885-86 (Minn. App. 1994) (rejecting claim that plea agreement was violated when defendant civilly committed and not released after serving sentence, because commitment is civil, not criminal, in nature); *In re Blodgett*, 490 N.W.2d 638, 647 (Minn. App. 1992) ("Since the two matters are separate, there is nothing in the criminal plea bargain to suggest the individual will not later be subject to civil-commitment proceedings."), *aff'd*, 510 N.W.2d 910 (Minn. 1994).

Appellant argues that the DOC's revocation hearing violated his due-process rights. This issue was not raised in district court and is waived on appeal. *See Johnson v. Fabian*, 735 N.W.2d 295, 310 n.4 (Minn. 2007) (noting that issues not raised below generally will not be considered on appeal). Further, appellant has failed to demonstrate any due-process violation because he received a formal evidentiary hearing, participated in that hearing, was allowed to call his psychologist as a witness, and received a written

explanation of the hearing and release unit officer's decision. *See State ex rel. Taylor v. Schoen*, 273 N.W.2d 612, 617 (Minn. 1978).

Finally, appellant requests appointment of counsel on appeal. But in a habeas proceeding, there is no right to appointed counsel for appeals. *Fratzke v. Pung*, 378 N.W.2d 112, 114 (Minn. App. 1985), *review denied* (Minn. Jan. 31, 1986).

We therefore affirm the district court's denial of appellant's petition for a writ of habeas corpus.

Affirmed.