STATE OF MINNESOTA

IN SUPREME COURT

A17-1895

Court of Appeals — Anderson, J.

State of Minnesota,
ex rel. Antwone Ford,

Appellant,

vs.

Filed: September 11, 2019
Office of Appellate Courts

Paul Schnell,
Commissioner of Corrections,

Respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Amy Lawler, Assistant Public Defender, Saint Paul, Minnesota, for appellant.

Keith Ellison, Attorney General, Rachel E. Bell-Munger, Kelly S. Kemp, Assistant Attorneys General, Saint Paul, Minnesota, for respondent.

S Y L L A B U S

1. The claims presented by appellant's petition for a writ of habeas corpus are justiciable.

2. A writ of habeas corpus is an appropriate procedural remedy when an agency fails to adhere to binding judicial precedent and, as a result, restrains a petitioner's liberty.

3. Because the Department of Corrections failed to adhere to the rule of law announced in *State ex rel. Marlowe v. Fabian*, 755 N.W.2d 792 (Minn. App. 2008), the district court properly granted the writ and imposed an appropriate remedy.

Reversed.

O P I N I O N

ANDERSON, Justice.

Appellant Antwone Ford petitioned the district court for a writ of habeas corpus, asserting that respondent Commissioner of Corrections unlawfully extended his incarceration for approximately 16 months after his conditional-release term began. Specifically, Ford asserted that the Department of Corrections (Department) failed to approve housing in a community in which he could be supervised. Following an evidentiary hearing, the district court determined that the Department failed to adhere to the law announced in *State ex rel. Marlowe v. Fabian*, 755 N.W.2d 792 (Minn. App. 2008), and granted Ford's petition for a writ, ordering the Department to either approve housing for Ford or modify the terms of his conditional release. The court of appeals vacated the district court's order as moot. *State ex rel. Ford v. Roy*, No. A17-1895, 2018 WL 3097717, at *8 (Minn. App. June 25, 2018). Because we conclude that Ford's claims are justiciable, and to provide Ford with timely relief, we issued an order reversing the court of appeals and reinstating the district court's order. *State ex rel. Ford v. Schnell*, No. A17-1895, Order at 2–3 (Minn. filed May 10, 2019). The following opinion sets forth the basis for our decision.

FACTS

This appeal raises issues regarding the supervision of offenders in the community. Generally, a prison sentence in Minnesota consists of two terms. The "term of imprisonment" is typically the first two-thirds of the sentence, with a supervised-release term comprising the remaining one-third of the sentence. *See* Minn. Stat. § 244.101, subd. 1 (2018); *see also Heilman v. Courtney*, 926 N.W.2d 387, 394 (Minn. 2019) (explaining that "felons generally serve sentences in two parts"). Certain classes of offenders, including some sex offenders, also must complete an additional term of "conditional release." *See, e.g.*, Minn. Stat. § 609.3455, subds. 6–7 (2018). "[C]onditional release of sex offenders is governed by provisions relating to supervised release." *Id.*, subd. 8(a) (2018); *see also State ex rel. Duncan v. Roy*, 887 N.W.2d 271, 272 n.1 (Minn. 2016) ("Functionally, conditional release is identical to supervised release."). If an inmate violates the release conditions, which are imposed by the Department, that release can be revoked and the offender returned to prison. Minn. Stat. § 244.05, subd. 3(2) (2018).

While on supervised or conditional release, an offender is on some form of supervision, either standard or intensive. *See id.*, subd. 6(a) (2018). If an offender is designated as a Level III sex offender, intensive supervised release is required. *Id.* This form of supervision involves rigorous conditions, ranging from electronic surveillance, house arrest, and curfew conditions, to random checks, searches, and drug tests, to prohibitions on internet access or access to social media. *See id.*, subd. 6(b)–(c) (2018). Offenders subject to intensive supervised release must have an approved residence during the release term because house-arrest conditions are necessary. Accordingly, the

Department's policies require offenders on intensive supervised release to reside in an agent-approved residence.

We now turn to the facts of Ford's case.

In 2008, Ford was convicted of third-degree criminal sexual conduct, *see* Minn. Stat. § 609.344, subd. 1(b) (2006), in Blue Earth County. The district court sentenced Ford to three years of imprisonment, stayed for 15 years, and imposed a 5-year conditional-release term. In 2013, Ford's sentence was executed, and he was committed to the custody of the Department.[1] In January 2014, the Department placed Ford on supervised release. At first he lived in a Department-funded residence in Mankato, but within a few months, he relocated to a private residence.

In August 2014, the Department revoked Ford's supervised release for a violation of his release conditions. His supervised-release term expired in February 2015, and he became eligible for conditional release. On the day Ford was released from prison, however, he was transferred to the Blue Earth County jail because he did not have approved housing in Blue Earth County. Although Ford searched for housing and made phone calls from the jail, he was unable to find approved housing. The Department revoked his release for 90 days and Ford was returned to prison.

In June 2015, the Department assigned Ford to another 90 days of incarceration because he still did not have approved housing in Blue Earth County. Although Ford requested a placement in Ramsey County, the county declined to provide courtesy supervision due to Ford's lack of historical ties to that area.

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[1] Ford's sentence, including his conditional-release term, expired on July 19, 2019.

In August 2015, Ford was released from prison to the Renville County jail for chemical dependency treatment, which he completed at the end of October 2015. He was returned to prison for 179 days because he still did not have approved housing in Blue Earth County. During this period of time, the Department unsuccessfully attempted to arrange several housing placements for Ford, including with his aunt in Wisconsin, his previous landlord in Mankato, his mother and sister in Fargo, and his brother in Moorhead. Ultimately, the Department concluded that Ford's status as a Level III sex offender made finding approved housing options difficult.

In April 2016, the Department extended Ford's incarceration by another 150 days. Two possible housing placements in Ramsey County were rejected due to "lack of ties and a concentration of [level-three] offenders" in the area. The Department was aware that Ford wished to return to the residence in Mankato, but a Mankato city ordinance prevented the placement.[2]

In May 2016, Ford petitioned for a writ of habeas corpus in district court, arguing that the Department unlawfully extended his incarceration based on an illegal city ordinance. The district court denied Ford's petition because he did not, and could not, join the City of Mankato as a party to the habeas petition. Ford appealed.

The court of appeals reversed. *State ex rel. Ford v. Roy*, No. A16-1769, Order (Minn. App. filed Feb. 1, 2017). Relying on *State ex rel. Marlowe v. Fabian*, 755 N.W.2d

[2] Ford filed an administrative appeal of the April 2016 decision to extend his incarceration and requested immediate release to the Mankato residence. He argued, unsuccessfully, that state law preempted the Mankato ordinance and the ordinance violated his due process rights.

792, 795 (Minn. App. 2008), the court of appeals concluded that although the Department was not required to find approved housing for Ford, it was required to provide assistance, which may require consideration of housing options for Ford in counties other than Blue Earth County. *Roy*, No. A16-1769, Order at 4. The court of appeals remanded the case to the district court "to permit the [Department] to develop the record with respect to what other housing options, including halfway houses, are available to Ford," and warned that if no suitable housing options are available, the Department was *"required to consider restructuring the conditions of release*." *Id.* (emphasis added). The Department did not petition for our review.

On February 22, 2017, two days before the remanded case was scheduled for a hearing and two years after Ford began his conditional-release term, the Department released Ford from incarceration to Alpha House, a residential sex offender treatment program and residence in Hennepin County. The Department argued that Ford's release to Alpha House made his request for habeas corpus relief moot. Ford asserted that his habeas petition was not moot because the district court should still determine whether the Department "must consider restructuring the conditions of release to allow him to be released either to the [intensive supervised release] house in Mankato or to any other suitable residence regardless of [the] county." The district court ultimately proceeded with the evidentiary hearing based on the instructions from the court of appeals. Moreover, Ford's release to Alpha House, which the district court did not consider to be a permanent residence, did not make Ford's claims moot. The district court explained:

> It is unclear how long [Ford] will be permitted to remain there; it is also unclear what will happen to him *when* he can no longer remain there.

> Because he remains subject to being re-incarcerated for lack of approved housing, and because his present housing situation is contingent, uncertain, and temporary at best, the question of what the Department of Corrections has done to assist him in obtaining *suitable* housing is not moot.

During the evidentiary hearing, Department witnesses testified regarding the Department's responsibilities and policies for the supervision of offenders on release, including supervision provided by Community Corrections Act (CCA) counties.[3] Department witnesses explained that an offender is not required to reside in any particular county. In general, an offender's case manager works with the offender to determine residency options, including suitable housing placements, and requests a supervising agent from the proposed county of placement or the county in which the offender has historical ties or community support. If neither of those options are viable, the local corrections agency in the county of commitment is responsible for the offender's release planning, which includes arranging and funding the housing placement in any county. Once the agent-assignment request is made, the county of referral has 15 days to assign the case to an agent, who then has 30 days to investigate the release plan. If a county rejects a placement request, supervision of the offender returns to the county responsible for assisting with the offender's release planning.

Testimony at the evidentiary hearing identified several reasons why CCA counties may refuse to assign agents to supervise an offender, including a belief that the level-three sex-offender concentration in the area is too high, residency restrictions, rental-licensing

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[3] The CCA authorizes the Department, a state agency, to subsidize and coordinate with counties to supervise offenders on conditional release. *See* Minn. Stat. §§ 401.01–.16 (2018). A "CCA county" "means a county that participates in the Community Corrections Act." Minn. Stat. § 401.01, subd. 2(b).

issues, and the presence of other felons living in the same residence. The Department has the option to use informal resolution methods to reach supervision agreements with CCA counties, ranging from discussion among supervisors and agents, to reducing the funding for a CCA county. Hearing officers from the Department will not dictate a housing placement for an offender, modify conditions of release, or secure a new agent assignment.[4]

Based on the record from the evidentiary hearing, it appears that the Department routinely declines to order the release of an offender to an available housing placement if a CCA county objects. The Department also refuses to engage counties in informal resolution efforts. For example, Ford's placement request in Ramsey County never went beyond the county's rejection of Ford's proposed residences. Ford's case manager testified during the evidentiary hearing that she never received training for or participated in the informal resolution process, and could not identify anyone in the Department who had

[4] Department witnesses testified that Department agents generally do not supervise offenders in CCA counties because the Department does not have the budget or resources to do so. By statute, a portion of the funds allocated for community supervision programs must be used for CCA county programs.

> The commissioner shall locate the programs [for providing intensive supervised release] so that at least one-half of the money appropriated for the programs in each year is used for programs in Community Corrections Act counties. In awarding contracts for intensive supervision programs in Community Corrections Act counties, the commissioner shall give first priority to programs that utilize county employees as intensive supervision agents and shall give second priority to programs that utilize state employees as intensive supervision agents.

Minn. Stat. § 244.13, subd. 1 (2018). Testimony during the evidentiary hearing established that funding for intensive supervised release is split evenly between the Department and CCA counties. *See also* Minn. Stat. § 244.056 (2018) (providing that a supervision transfer request must be made when "a corrections agency supervising an offender who is required to register as a predatory offender . . . has knowledge that the offender is seeking housing arrangements in a location under the jurisdiction of another corrections agency").

participated in such a process. Informal discussions with CCA counties about placement possibilities are "rare," according to the case manager. Although a county agent was temporarily assigned to supervise Ford at Alpha House in Hennepin County, once he completes the residential portion of the program, the county's courtesy supervision will end. In fact, Ford's current supervision agent testified during the evidentiary hearing that his assignment will end if and when Ford is released from treatment into the community. Therefore, if Ford wants to continue living in Hennepin County when he completes the treatment program at Alpha House, he will need to submit a supervision request to Hennepin County, which, according to Department witnesses who testified during the evidentiary hearing, has the authority to refuse the request. The end result is that Ford will ultimately return to prison.[5]

The district court granted Ford's petition for a writ of habeas corpus,[6] finding that the Department violated *Marlowe* by refusing to modify his conditions of release and instead "act[ing] as mere scriveners, simply documenting release-planning efforts" despite

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[5] Ford testified during the evidentiary hearing that he located a Ramsey County landlord through a fellow inmate and that the landlord was willing to rent to him. This proposed placement was not pursued, Ford testified, because his case manager told him that Ramsey County, like Hennepin County, was not accepting supervision of any more Level III offenders. Ford's testimony was supported by the testimony of his case manager, who acknowledged that Ramsey County would not consider a proposed placement unless the offender was convicted in that county. Ford does not believe that he can complete the second phase of the Alpha House treatment program in Hennepin County because of his difficulty with finding approved housing. This, in turn, impacts Ford's ability to complete treatment, which is a condition of his release. Ford testified that he expects to return to prison, the prospect of which is stressful, particularly because his ability to complete treatment is a struggle.

[6] The district court did not address Ford's other claims, which were not part of the remand instructions from the court of appeals.

his inability to locate approved housing in the community. The district court also found that the Department failed to follow its own internal policy for finding placements, instead using "an informal practice of treating the county of commitment, not the county of proposed residence, as the presumptive release jurisdiction, even when an offender has a proposed residence in another county," and not "engaging the dispute resolution process." The district court concluded that absent enforcement of its own policies, the Department effectively set Ford up for failure, particularly in light of testimony indicating that Hennepin County was likely to refuse to supervise Ford when he finished the Alpha House program. The district court ordered the Department to fully comply with its policy and the dictates of *Marlowe* by treating either Hennepin County or Ramsey County as Ford's presumptive release jurisdiction. If, after dispute resolution, either county declined to accept supervision of Ford, then the district court ordered the Department to "provide [Department] supervision in that county, or modify Ford's conditions of release."

The Department appealed the district court's order granting Ford a writ of habeas corpus. The court of appeals reversed, concluding that Ford's request for relief became moot when he was released from Alpha House. *State ex rel. Ford v. Roy*, No. A17-1895, 2018 WL 3097717, at *8 (Minn. App. June 25, 2018). The court of appeals concluded that Ford was not suffering from a "direct or imminent injury" because "Hennepin County has not yet refused to supervise him," and no mootness exceptions applied. *Id.* at *4, *8. Although the court of appeals questioned whether the Department's conduct was causing the issue to evade review, it was "not yet willing to make that determination on this record

and the limited cases to date." *Id.* at *6. Moreover, the court of appeals determined that the issue was not of statewide significance and did not require an immediate decision. *Id.*

We granted Ford's petition for review and initially stayed his appeal pending our decision in a factually similar dispute, *State ex rel. Leino v. Roy*, 910 N.W.2d 477 (Minn. App. 2018), *rev. granted* (Minn. July 27, 2018), *appeal dismissed as improvidently granted sub nom. State ex rel. Leino v. Schnell*, No. A17-1278, Order (Minn. filed May 10, 2019). After argument in *Leino*, we lifted the stay in this case, ordered briefing, and held oral argument.

ANALYSIS

Broadly, this case presents three issues. The threshold issue is whether Ford's release to Alpha House rendered his request for a writ of habeas corpus moot or otherwise nonjusticiable. Next, we address whether the writ of habeas corpus provides appropriate procedural relief under the circumstances of this case. Lastly, we consider whether the Department failed to adhere to the law.[7] We consider questions of law under a de novo standard of review, *see State v. Wukawitz*, 662 N.W.2d 517, 525 (Minn. 2003), but afford "great weight" to the district court's findings of fact, *State ex rel. Kons v. Tahash*, 161 N.W.2d 826, 832 (Minn. 1968).

[7] The Department is correct that Ford's initial habeas petition did not raise the *Marlowe* issue, which is central to this appeal. But the Department's forfeiture argument comes too late. *See Sigurdson v. Isanti Cty.*, 448 N.W.2d 62, 66 (Minn. 1989) ("Law of the case applies when the appellate court has ruled on a legal issue and remanded for further proceedings on other matters. The issue decided becomes 'law of the case' and may not be . . . reexamined in a second appeal.").

I.

We begin with the question of justiciability, starting with mootness, the basis on which the court of appeals dismissed the appeal in this case. An appeal is moot when "a decision on the merits is no longer necessary or an award of effective relief is no longer possible." *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015); *see also Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005) (stating that a case should be dismissed as moot when the court is "unable to grant effectual relief"). Whether Ford's request for relief via the writ of habeas corpus is moot is a question of law, which we review de novo. *See Dean*, 868 N.W.2d at 4.

The competing considerations bearing on this issue are best framed by the arguments of the parties. The Department argues that Ford's petition is moot because he has received his requested relief: release from prison. Ford counters that his release is temporary because the Department is supervising him in the community on a "courtesy" basis only. According to Ford, Hennepin County is unlikely to agree to supervise him when he is released from Alpha House, so he is likely to return to prison unless he can secure some other agreement for courtesy supervision. The Department, in response, contends that Ford's argument presents a ripeness problem, noting that "[h]abeas relief is not available for decisions that have not been made." *See State ex rel. McMonagle v. Konshak*, 162 N.W. 353, 353 (Minn. 1917) ("The writ of habeas corpus is not designed to secure immunity from imprisonment at some future time, but only to secure release from present enforced imprisonment or restraint."). The court of appeals agreed with the Department, concluding that Ford's petition for a writ of habeas corpus was moot based on

a lack of "direct or imminent injury" to Ford because "Hennepin County has not yet refused to supervise him." *Ford*, 2018 WL 3097717, at *4.

Ripeness considers when a dispute may be brought. *See McKee v. Likins*, 261 N.W.2d 566, 569–70 n.1 (Minn. 1977); *see also State v. Murphy*, 545 N.W.2d 909, 917 (Minn. 1996) (explaining that a ripe dispute presents "a substantial and real controversy between the parties" based on a "direct and imminent injury"). Both mootness and ripeness are relevant to the question of justiciability, and an "essential" part of the analysis is whether "a direct personal interest of [the] complainant [is] placed in jeopardy." *State ex rel. Smith v. Haveland*, 25 N.W.2d 474, 478 (Minn. 1946). The personal interest must exist at the outset and during the proceedings. *Dean*, 868 N.W.2d at 4–5. "Issues which have no existence other than in the realm of future possibility are purely hypothetical and are not justiciable." *Lee v. Delmont*, 36 N.W.2d 530, 537 (Minn. 1949). For example, an individual who challenges the constitutionality of a statute must show that the statute "is, or is about to be, applied to his disadvantage." *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 338 (Minn. 2011) (citation omitted) (internal quotation marks omitted). But we do not apply the doctrines of justiciability mechanically. *See Dean*, 868 N.W.2d at 4.

In this case, we conclude that Ford's habeas petition is not moot, and his request for relief presents a sufficiently ripe question. In reaching this conclusion, we rely on and afford great weight to the findings of the district court. Specifically, the district court found that Hennepin County is likely to refuse to supervise Ford after his time at Alpha House ends, and the Department will not provide courtesy supervision if he remains in that county. Furthermore, the district court found that if Hennepin County refuses to supervise Ford,

the Department is likely to revoke his release, as it has done in the past, based on his failure to have an agent-approved residence, and Ford will return to prison, as he has in the past. Finally, the district court found that the Department's unwillingness to enforce its own policies by requiring Hennepin County to accept supervision intentionally sets Ford up for failure. These findings by the district court have ample support in the record, and many of the facts are undisputed.

Thus, substantial evidence leads us to conclude that the likelihood of Ford being sent back to prison is not "purely hypothetical," *Lee*, 36 N.W.2d at 537, and his interest in remaining in the community rather than returning to prison is still "in jeopardy," *Haveland*, 25 N.W.2d at 478, despite his temporary release. *Cf. Hensley v. San Jose Mun. Ct.*, 411 U.S. 345, 352 (1973) ("This is not a case where the unfolding of events may render the entire controversy academic."). As put by the district court, Ford's housing situation is "contingent, uncertain, and temporary at best," and his return to prison for a lack of suitable housing is not so much a matter of if but *when*. Because Ford's release is only temporary, and because he faces a nonspeculative threat of returning to prison, we hold that Ford's petition for a writ of habeas corpus is not moot and his request for relief on the petition is ripe for decision.

Our holding is neither unique nor without precedent.[8] Other courts have held that the writ of habeas corpus is an appropriate means to challenge future incarceration. *See,*

[8] The Department relies on our decision in *Konshak*, where we stated that "[t]he writ of habeas corpus is not designed to secure immunity from imprisonment at some future time, but only to secure release from present enforced imprisonment or restraint." 162 N.W. at 353. Our decision in *Konshak* is factually distinguishable because the petitioner in *Konshak* was on bail, which entailed the "voluntary surrender of himself to the custody

e.g., *Preiser v. Rodriguez*, 411 U.S. 475, 487 (1973) ("[H]abeas corpus relief is not limited to immediate release from illegal custody, but . . . the writ is available as well to attack future confinement and obtain future releases."); *Carroll v. Johnson*, 685 S.E.2d 647, 651–52 (Va. 2009) (holding that habeas relief is not limited to situations in which a favorable result will mean the petitioner's immediate release). Certainly, other courts have required imminent incarceration. *See United States v. Ross*, 801 F.3d 374, 379 (3d Cir. 2015) ("[R]estraints on the [habeas] petitioner must be (1) severe, (2) immediate (*i.e.*, not speculative), and (3) not shared by the public generally."); *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 874 n.8 (1st Cir. 2010) ("We recognize that a future restraint on liberty may provide a basis for habeas jurisdiction if it is imminent and inevitable."); *Spring v. Caldwell*, 692 F.2d 994, 998 (5th Cir. 1982) ("The existence of an imminent possibility of incarceration without a formal trial and criminal conviction may create such a restraint on liberty as to constitute custody [for federal habeas purposes]."); *Roba v. United States*, 604 F.2d 215, 219 (2d Cir. 1979) ("Petitioner need not wait until the marshals physically lay hands on him; he is entitled *now* to challenge the allegedly unlawful conditions of his imminent custody." (emphasis added)). In this case, the evidence establishes that Ford's return to prison is imminent and almost inevitable, even if it has not yet occurred.

Further, the statewide significance of these issues demonstrates that they should be decided now, and the record in this case confirms that Ford's case is functionally

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of an officer of the law," a step taken to "sue out [a] writ of habeas corpus." *Id*. In this case, Ford was not sent back to prison to procure a writ of habeas corpus. Instead, his incarceration was continually extended based on the lack of approved housing in the community. *Konshak* is inapplicable to the instant case.

justiciable. *See, e.g.*, *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984) (explaining that mootness is a "flexible discretionary doctrine"). We are mindful that the court of appeals has identified a "parade of appeals" related to the issue presented in this case. *State ex rel. Young v. Roy*, No. A17-1741, 2018 WL 2407259, at *3 (Minn. App. May 29, 2018) (emphasis omitted), *rev. granted, stayed* (Minn. Aug. 21, 2018). A Department witness with firsthand experience placing offenders in the community testified during the evidentiary hearing that placement was the biggest release-planning hurdle and rejection for lack of historical ties happens monthly, affecting up to 15 percent of her caseload. In the words of the Department witness, "any offender," not just a Level III sex offender, struggles to find housing. Our review of the record convinces us that Ford's petition presents an important issue of statewide significance that should be decided now. In addition, an issue is "functionally justiciable" when the record contains the raw material traditionally associated with effective judicial decision-making, including a full presentation of both sides of the issues raised. *Dean*, 868 N.W.2d at 6. In this case, the record is well developed and both parties are represented by attorneys who are well versed in the law and facts. Therefore, we conclude that Ford's claims are functionally justiciable and should be decided now.

II.

We next consider whether habeas corpus, under the circumstances, is an appropriate procedural remedy. The proper scope of habeas relief presents a question of law, which we review de novo. *See State ex rel. Savage v. Rigg*, 84 N.W.2d 640, 643 (Minn. 1957) ("After a hearing, the trial court denied petitioner's application for a writ of habeas corpus,

and this appeal followed. The case is here de novo. We have examined the entire record . . . in order to ascertain whether the petition presents any claim which, if substantiated by evidence, would entitle petitioner to a writ of habeas corpus."); *Breeding v. Swenson*, 60 N.W.2d 4, 6 (Minn. 1953) (stating that "the matter is now before us for de novo review to ascertain the sufficiency of his petition").

The Department argues that habeas relief is not available for an alleged violation of an internal agency policy. In the absence of a constitutional or statutory violation, the Department contends that, by granting Ford's petition for a writ of habeas corpus, the district court erred as a matter of law.

We disagree for several reasons. First, the plain language of the habeas corpus statute lacks the limitations that the Department would have us impose. *See* Minn. Stat. § 589.01 (2018) (providing that "[a] person imprisoned or otherwise restrained of liberty" may petition for a writ, without stating what kind of illegal restraint the petition must challenge). The statutory phrase "otherwise restrained of liberty" broadens the scope of relief available beyond only "a person imprisoned."

Second, our precedent does not support the Department's narrow view of habeas corpus. *See, e.g.*, *State ex rel. Cole v. Tahash*, 129 N.W.2d 903, 907 (Minn. 1964) ("*Any* unlawful restraint of personal liberty may be inquired into on habeas corpus." (emphasis added)); *Townsend v. Kendall*, 4 Minn. 412, 421, 4 Gil. 315, 325 (1860) (stating that when someone "attempts to exercise any restraint over the person of any one within this State, the writ of *habeas corpus* or any other appropriate remedy will always be effectual to enquire into the propriety of such attempted restraint"); *see also Jones v. Cunningham*,

371 U.S. 236, 243 (1963) ("[The writ of habeas corpus] is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose—the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty."); *In re Bonner*, 151 U.S. 242, 259 (1894) ("[I]t should be constantly borne in mind that the writ was intended as a protection of the citizen from encroachment upon his liberty from any source."). Here, the district court found that Ford's liberty was restrained by the Department's failure to abide by its own internal policies *and* judicial precedent. *See Marlowe*, 755 N.W.2d at 797. Certainly an agency is not free to disregard published and binding judicial precedent. *Ithaca Coll. v. NLRB*, 623 F.2d 224, 228 (2d Cir. 1980) ("[A]s must a district court, an agency is bound to follow the law of the Circuit."); *see also St. Margaret Mem'l Hosp. v. NLRB*, 991 F.2d 1146, 1154 (3d Cir. 1993) ("[A]n administrative tribunal whose findings, conclusions and orders are subject to direct judicial review by courts of appeals . . . is, of course, bound to follow the precedent of this Court."). "It is, emphatically, the province and duty of the judicial department, to say what the law is," *Marbury v. Madison*, 5 U.S (1 Cranch) 137, 177 (1803), and an agency "ignore[s] that principle at [its] peril," *Hillhouse v. Harris*, 715 F.2d 428, 430 (8th Cir. 1983) (per curiam) (citation omitted) (internal quotation marks omitted). Because judicial precedent is binding on administrative agencies, a writ of habeas corpus is the proper avenue for Ford's challenge alleging the Department's violation of *Marlowe*.

Third, in reviewing requests for relief via habeas corpus, "our concern is *primarily* directed to . . . whether the defendant was denied fundamental constitutional rights." *State ex rel. Bassett v. Tahash*, 116 N.W.2d 564, 565 (Minn. 1962) (emphasis added)*; see also*

Beaulieu v. Minn. Dep't of Human Servs., 798 N.W.2d 542, 548 (Minn. App. 2011) (stating that a petitioner "may obtain habeas relief only if he can establish that he is restrained because of a constitutional violation"), *aff'd on other grounds*, 825 N.W.2d 716 (Minn. 2013). But "primarily" does not mean "only," and our recent decisions reflect a broader view of our earlier use of "primarily." *See, e.g.*, *State ex rel. Duncan v. Roy*, 887 N.W.2d 271, 275 (Minn. 2016) (considering a request for relief via habeas corpus that challenged the Department's calculation of a conditional-release term without asserting a constitutional violation); *State v. Schnagl*, 859 N.W.2d 297, 303 (Minn. 2015) (stating that "judicial review of the Commissioner's administrative decision implementing the sentence imposed may be obtained by a petition for a writ of habeas corpus in which the Commissioner is a named party").

Finally, we decline to compress the "great writ," *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 95 (1807) (Marshall, C.J.), into "a static, narrow, formalistic remedy," *Jones*, 371 U.S. at 243. The "privilege of the writ of habeas corpus" is found in our constitution's bill of rights. Minn. Const. art. I, § 7. The Legislature has recognized that we have the power to issue all writs "necessary to the execution of the laws *and the furtherance of justice*." Minn. Stat. § 480.04 (2018) (emphasis added). The express terms of the Legislature's grant of power to the district courts to issue writs, *see* Minn. Stat. § 484.03 (2018), is no narrower. In habeas proceedings, courts "may grant relief suited to the scope of the violation." *State ex rel. Schmelzer v. Murphy*, 548 N.W.2d 45, 48 (Wis. 1996); *accord Townsend*, 4 Minn. at 421, 4 Gil. at 325 ("[U]pon such enquiry [in a

habeas corpus proceeding,] the proper Court can make such order or judgment as the case may require.").[9]

Ford argues that the Department's failure to abide by its internal policies and binding judicial precedent—specifically, *Marlowe*—have kept him incarcerated for an extended period of time. We find Ford's petition for a writ of habeas corpus to be an appropriate procedural remedy.

III.

The remaining question is whether the Department failed to adhere to the law set forth in *Marlowe,* and if so, whether the relief granted is "suited to the scope of the violation." This legal question is subject to de novo review. *Collins v. Minn. Sch. of Bus., Inc.*, 655 N.W.2d 320, 329 (Minn. 2003).

The facts of *Marlowe* are similar to the facts here. Marlowe served a prison term and on his supervised release date, had no approved residence in the community. 755 N.W.2d. at 793. Like Ford, Marlowe required intensive supervision. *Id.* When Marlowe was released from prison, he was transported to the Washington County jail and the Department charged him with violating the conditions of his release for failing to procure approved housing. *Id.* Like the testimony during Ford's evidentiary hearing, witnesses from the Department testified during Marlowe's revocation hearing that the

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[9] We note that this case does not involve a collateral attack on Ford's conviction or sentence. *See State v. ex rel. Baker v. Utecht*, 21 N.W.2d 328, 331 (Minn. 1946) ("In the absence of a denial of due process of law, whereby the court has lost its jurisdiction and its judgment is void and not merely voidable, a judgment, though otherwise erroneous, cannot be attacked collaterally under a writ of habeas corpus."); *see also* Minn. Stat. § 589.01 (stating that habeas relief is not allowed for "persons committed or detained by virtue of the final judgment of a competent tribunal of civil or criminal jurisdiction").

county rejected a proposed supervision plan for Marlowe and the Department declined to supervise Marlowe in housing "across county lines." *Id.* at 793–94. The district court denied Marlowe's petition for a writ of habeas corpus. *See id.* at 794. The court of appeals reversed. *Id.* at 797. The court of appeals determined that the Department has the authority to "restructure" the conditions of an offender's supervised release when the original conditions are "unworkable," but found that the Department "mistakenly believed" that the only option was to revoke Marlowe's release despite the availability of "a suitable residential placement" in a neighboring county. *Id.* at 796. The court of appeals admonished:

> At the very least, when a condition becomes unworkable at the time of release due to circumstances largely outside the control of an offender, the [Department] must consider a restructure or modification of those conditions . . . . We therefore conclude that the [Department] is required to reconsider its decision to revoke Marlowe's release. *The [Department] must consider restructuring Marlowe's release plan and must seek to develop a plan that can achieve Marlowe's release from prison and placement in a suitable and approved residence*, whether in Washington County or in a neighboring county.

Id. at 796–97 (emphasis added).[10] The court of appeals stated, plainly, that the Department "has an obligation to fashion conditions of release that are workable and not impossible to satisfy." *Id.* at 793.

[10] Ramsey County accepted supervision of Marlowe after the court of appeals filed its decision. *See Marlowe v. Fabian*, 676 F.3d 743, 746 (8th Cir. 2012) (noting that Ramsey County "changed its position and agreed to provide supervision"). Ultimately, Marlowe sued Department officials under 42 U.S.C. § 1983 for "unlawfully imprisoning him 375 days beyond the date on which he became eligible for supervised release." *See* 676 F.3d at 744.

In this case, the district court specifically found that the Department "has not met its obligations to Ford under *Marlowe*." Despite *Marlowe*'s clear holding, the district court noted that the Department "never modifies offenders' conditions of release," acting instead "as mere scriveners, simply documenting release-planning efforts."

The Department neither contends that it complied with *Marlowe* nor asks us to decline to follow *Marlowe*. Rather, the Department asks us to remand to the court of appeals to consider whether the district court's factual findings are clearly erroneous and whether it erred as a matter of law by granting habeas relief to Ford. We decline the Department's invitation. To return this case for another round of appellate review would fully thwart the very purpose of the writ. *See Wojahn v. Halter*, 39 N.W.2d 545, 548 (Minn. 1949) ("[T]he purpose of a writ of habeas corpus is to *speedily test* the propriety of the restraint." (emphasis added)); *Northfoss v. Welch*, 133 N.W. 82, 84 (Minn. 1911) ("The office of the writ of habeas corpus is to afford the citizen a *speedy and effective* method of securing his release when illegally restrained of his liberty." (emphasis added)).

We also reject the Department's attempt to parse *Marlowe* into pieces. Under *Marlowe*, the Department is *required* to "consider restructuring [the offender's] release plan and . . . seek to develop a plan that can achieve [the offender's] release from prison and placement in a suitable and approved residence, whether in [the county of commitment] or in a neighboring county." 755 N.W.2d. at 797; *see also id.* at 793 (stating that the Department "*has an obligation* to fashion conditions of release that are workable and not impossible to satisfy" (emphasis added)). The Department's argument ignores the clear language and full context of the *Marlowe* decision. The district court did not err when

it found that "mere scriven[ing]" of release-planning efforts does not satisfy the Department's obligations under *Marlowe*.[11]

The record before us is clear and accurate. "To conclude that '[f]indings of fact . . . are clearly erroneous' we must be 'left with the definite and firm conviction that a mistake has been made.' " *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (quoting *In re Stisser Grantor Trust*, 818 N.W.2d 495, 507 (Minn. 2012)). The Department's challenges to the district court's findings of fact lack merit, except for one. The Department argues that the district court misread a website, which led to an error in its factual findings related to Ramsey County. It appears that the district court mistakenly used the Bureau of Criminal Apprehension offender locator website rather than the Department offender locator website to retrieve data about the concentration of Level III sex offenders by geographic area. Therefore, we agree with the Department that the district court's finding that "there is not a single [level-three] sex offender living in either zip code 55104 or 55106" is erroneous. The error, however, is harmless. Although the district court relied, in part, on the availability of suitable residential rental housing in Ramsey County to find that the Department violated *Marlowe*, the district court separately found that "Ramsey County refused to supervise Ford at that time due to his lack of historical ties to Ramsey County, and for no other reason." Therefore, the district court's conclusion is

[11] This case is not the first time the Department has resisted the clear holding of *Marlowe*. *See, e.g.*, *State ex rel. Sather v. Roy*, No. A16-2064, 2017 WL 2920361, at *3 n.4 (Minn. App. July 10, 2017) ("The state contends that the rule from *Marlowe* is mere dicta. This argument lacks merit.").

supported by other accurate factual findings and the single erroneous finding is not dispositive.

Ultimately, we uphold the relief ordered by the district court. To cure the Department's violation of *Marlowe*, the district court ordered the Department to "fully comply" with *Marlowe*. If Ford proposes the Portland House in Hennepin County or a residential placement in Ramsey County, the district court ordered the Department to treat either county as Ford's presumptive release jurisdiction. If either county declines to accept supervision of Ford, the district court ordered the Department to "provide [Department] supervision in that county, or modify Ford's conditions of release."[12] The scope of the district court's order corresponds to the scope of the Department's violation of *Marlowe*. Accordingly, in our order filed on May 10, 2019, we reversed the court of appeals and reinstated the district court's order.

[12] The Department argues that the district court "essentially ordered the [Department] to approve whatever residence Ford proposes" and "[t]his lack of judicial deference violates well-established separation of powers principles." The Department's argument does not constitute a fair reading of the district court order, which requires only that the Department follow *Marlowe* and its own policy. Although the Department cites *State v. Schwartz*, 628 N.W.2d 134, 142 n.4 (Minn. 2001) (recognizing that "broad discretion [should be] accorded [to] those making release decisions"), broad discretion is not unbounded discretion. Why the Department would resist abiding by its own policy is unclear, and in any case, the Department must follow judicial precedent.

The Department also indicates that Policy 203.018 has been updated since the evidentiary hearing in this case to better define an offender's "historical ties" to a particular location and address issues related to a county's acceptance of a supervision request. But the Department does not explain if, or how, the specific amendments are material to this appeal.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals.

Reversed.