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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2055, A11-2104**

Joseph Anthony Favors,
Appellant,

vs.

Jamie Jungers, et al.,
Respondents.

**Filed June 11, 2012
Affirmed in part and vacated in part
Stoneburner, Judge**

Carlton County District Court
File No. 09-CV-10-2240

Washington County District Court
File No. 82-CV-11-804

Joseph Anthony Favors, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Ricardo Figueroa, Assistant Attorney General, St. Paul, Minnesota (for respondents)

Considered and decided by Stoneburner, Presiding Judge; Klaphake, Judge; and Cleary, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

In this consolidated appeal, appellant challenges the Carlton County district court's dismissal of a petition for a writ of habeas corpus filed by appellant in Washington County (A11-2055) and a Washington County district court's subsequent

partial dismissal of the same petition and transfer of remaining issues to Carlton County (A11-2104). Because at the relevant time the Carlton County district court had no authority to dismiss the petition, we vacate the Carlton County district court order of dismissal as void in appeal A11-2055. Because the Washington County district court did not err in dismissing a portion of the petition as moot and did not err or abuse its discretion in transferring the remaining claims to Carlton County, we affirm the order in appeal A11-2104.

FACTS

While appellant Joseph Anthony Favors was incarcerated at Minnesota Department of Corrections-Stillwater (DOC-Stillwater) for a criminal-sexual-conduct conviction, Dakota County successfully petitioned for his indefinite commitment to the Minnesota Sex Offender Program (MSOP) as a sexually dangerous person (SDP) and as a sexual psychopathic personality (SPP). Favors was released from DOC-Stillwater in November 2008 on supervised release with 29 special conditions, including that he “not engage in any assaultive, abusive or violent behavior, including harassment, stalking, or threats of violence.” He was immediately transferred to MSOP-Moose Lake under the commitment order.

In December 2009, Favors alleged that MSOP-Moose Lake staff member M.H. was engaging in an inappropriate relationship with a client. The Office of Special Investigations (OSI) investigated and reportedly found no evidence of the alleged relationship. But Favors continued to ask about the case. Each time he asked, he was told that the matter was under investigation and that he was to stop talking about it.

In April 2010, Favors sent the OSI and various other authorities another complaint, alleging an ongoing relationship between M.H. and the client. Favors was interviewed by OSI Deputy Director Jamie Jungers and OSI Special Investigator Diana Magaard in May 2010. Favors told them that he had followed the client and M.H. to observe and document their interactions. The investigators instructed Favors to stop following the client and M.H. They told Favors that he would not be informed of the results of the investigation and needed to allow the process to “evolve.”

In May 2010, M.H. sent an email to Favors’s clinician, Deb Konieska, stating that Favors was stalking M.H., who had submitted nine incident reports about Favors’s behavior between December 2009 and March 2010. Two days after M.H.’s email to Konieska, another clinician reported that one of her clients had given her a copy of “instructions” distributed by Favors, describing how other clients were to help him follow M.H.

In late July 2010, Favors was given notice that he had violated the terms of his supervised release by engaging in stalking and harassing behaviors. After a revocation hearing, Favors’s supervised release was revoked and he was transferred to DOC-Stillwater to serve the remainder of his prison sentence, which expired on February 11, 2011. On February 11, 2011, Favors was released from DOC-Stillwater and returned to MSOP-Moose Lake.

On February 7, 2011, four days before his release from prison, Favors filed a petition for a writ of habeas corpus in Washington County, challenging the revocation of his supervised release as retaliatory and seeking vacation of the revocation and release

from prison and from commitment. In May 2011, Favors amended the petition in a 27-page document, adding claims that, after his return to MSOP-Moose Lake, he was subjected to ongoing retaliation for his actions related to his allegations against M.H.

Respondents consist of the commissioner of the Minnesota Department of Corrections (DOC), the commissioner of the Minnesota Department of Human Services, the director of OSI, OSI employees, parole officers, the hearing officer, and MSOP employees. Respondents, for reasons explained only as “inadvertent,” filed their response to Favors’s petition in Carlton County on July 21, 2011. They filed the answer in Washington County on August 15, 2011.

The Carlton County district court, apparently based only on the accidentally filed response to Favors’s petition, issued an order on September 14, 2011, dismissing Favors’s petition for a writ of habeas corpus for lack of subject-matter jurisdiction because Favors was no longer in prison, and dismissing his constitutional challenges to the commitment as without merit.

On September 19, 2011, the Washington County district court issued an order dismissing Favors’s petition insofar as it related to incarceration at DOC-Stillwater because Favors’s sentence had expired. The order transferred venue of Favors’s claims concerning MSOP-Moose Lake to Carlton County. The Washington County district court concluded that “M.H.’s arrest and . . . prosecution for inappropriate behaviors with clients at MSOP-Moose Lake” gave merit to Favors’s claims about M.H., and that Favors’s revocation “could adversely affect any future proceedings.” Favors now appeals

the dismissal of all claims by the Carlton County district court and the partial dismissal of claims and transfer of the remaining claims by the Washington County district court.

D E C I S I O N

1. Standard of review

“The district court’s findings in support of a denial of a petition for a writ of habeas corpus are entitled to great weight and will be upheld if reasonably supported by the evidence.” *Aziz v. Fabian*, 791 N.W.2d 567, 569 (Minn. App. 2010). Questions of law pertaining to a habeas petition are subject to de novo review. *Id.*

“A writ of habeas corpus is a statutory civil remedy available to obtain relief from unlawful imprisonment or restraint.” *Rud v. Fabian*, 743 N.W.2d 295, 296 (Minn. App. 2007). “A writ of habeas corpus may also be used to raise claims involving fundamental constitutional rights and significant restraints on a defendant’s liberty or to challenge the conditions of confinement.” *Id.* (citing *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26-27 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006)).

2. Appeal A11-2055

In appeal A11-2055, Favors challenges Carlton County’s dismissal of his habeas corpus petition on various grounds. But dispositive of the challenge is the fact that the district court in Carlton County did not have authority to dismiss Favors’s habeas corpus petition because the petition was not filed in, and therefore not venued in, Carlton County.

“A person may apply for a writ of habeas corpus by petition addressed to the Supreme Court, [the] Court of Appeals, or to the district court of the county *where the*

petitioner is detained.” Minn. Stat. § 589.02 (2010) (emphasis added). Favors was physically detained in Washington County when he filed his petition, so his petition was properly venued in Washington County.

The record does not reflect why, when the petition was not venued in Carlton County, the Carlton County district court issued an order dismissing the accidentally filed petition. “[P]roper venue is a place in which a court with subject-matter jurisdiction may exercise its power” *State v. Daniels*, 765 N.W.2d 645, 649 (Minn. App. 2009) (discussing venue in the context of criminal charges), *review denied* (Minn. Aug. 11, 2009). Because the Carlton County district court had no authority to exercise its power by dismissing Favors’s petition with prejudice, the order of dismissal is ineffective and void. Having voided the order, we decline to address any of Favors’s additional allegations concerning the Carlton County district court order.

3. Appeal A11-2104

In appeal A11-2104, Favors challenges the Washington County district court’s partial denial of his petition for a writ of habeas corpus. Because, when the district court considered the petition, Favors had served his entire sentence, had been released from DOC-Stillwater custody, and was being detained in Carlton County under the commitment order, the district court concluded that there was no further relief that it could grant regarding DOC-Stillwater custody, making the portion of the petition that challenged incarceration at DOC-Stillwater moot. The district court noted that, “[e]ven if the Court were to invalidate Petitioner’s revocation, this would have no effect on the legality of Petitioner’s civil commitment at MSOP-Moose Lake.”

Habeas proceedings are designed to test the legality of the detention, and the petitioner must be in the custody of the state for a writ of habeas corpus to lie. *State ex rel. Meldahl v. Tahash*, 278 Minn. 51, 53, 153 N.W.2d 147, 148 (1967); *State v. Clark*, 270 Minn. 181, 185, 132 N.W.2d 811, 814 (1965). A petition for a writ of habeas corpus that is directed to the state, when the state does not have custody of the petitioner, is improper and subject to dismissal. *Meldahl*, 278 Minn. at 53, 153 N.W.2d at 148. The district court did not err by concluding that it could not grant the relief Favours sought with regard to incarceration at DOC-Stillwater. *See id.*, 278 Minn. at 52-53, 153 N.W.2d at 148 (“It is our opinion under the record here that inasmuch as relator has been unconditionally discharged from the custody of respondent warden and removed from the jurisdiction of the courts of this state since about . . . 6 months before this case was heard in our court . . . the present appeal is moot.”).

It is “[w]ell established in this state’s jurisprudence . . . that the court will decide only actual controversies. If the court is unable to grant effectual relief, the issue raised is deemed to be moot resulting in dismissal of the appeal.” *In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989). “Notwithstanding this aversion to consideration of moot questions, appellate courts have carved out an exception provided the issue is capable of repetition yet evading review.” *Id.* (quotation omitted). Favours discusses “adverse collateral legal consequences” in relation to mootness in his brief, but he does not demonstrate that confinement by the DOC is capable of repetition in relation to mootness. Because Favours’s sentence has expired, confinement at DOC-Stillwater for violation of supervised

release cannot reoccur. The Washington County district court did not err by denying Favors's challenge to incarceration at DOC-Stillwater as moot.

Favors's petition also sought release from confinement at MSOP-Moose Lake based on his assertion that he suffered cruel and unusual punishment at the hands of MSOP staff. Favors asserts that the Washington County district court abused its discretion and "created a plain error" by transferring his claims for release from commitment to Carlton County. We disagree.

"It is well established that a person who is civilly committed 'can test the legality of his confinement by habeas corpus,' although 'the scope of inquiry is limited.'" *Beaulieu v. Minn. Dep't of Human Servs.*, 798 N.W.2d 542, 546 (Minn. App. 2011) (quoting *State ex rel. Anderson v. U.S. Veterans Hosp.*, 268 Minn. 213, 217, 128 N.W.2d 710, 714 (1964)); *see also* Minn. Stat. § 253B.23, subd. 5 (2010) (stating that "nothing in [chapter 253B] shall not be construed to abridge the right of any person to the writ of habeas corpus"). The Washington County district court stated that venue of Favors's claims against MSOP-Moose Lake was not appropriate in Washington County because venue there "would certainly cause undue hardship for all parties involved, as the alleged injuries to Petitioner have all occurred in Carlton County and all witnesses reside there or work there." The district court also found that changing venue would serve the interests of judicial economy. A district court's change of venue in the interests of justice and for the convenience of witnesses will not be disturbed unless there is a clear abuse of discretion. *Thies v. Midland Coop. Wholesale Inc.*, 254 Minn. 369, 370, 95 N.W.2d 307,

309 (1959). Favors has not demonstrated that the Washington County district court abused its discretion in this case.

Additionally, as discussed above, a person must apply for a writ of habeas corpus in the district court of the “county where the petitioner is detained.” Minn. Stat.

§ 589.02. Although Favors was detained in Washington County when he filed the petition, he is no longer detained there, and, under the plain language of the statute, the Washington County district court no longer has authority to exercise its power over Favors’s challenge to his detention at MSOP-Moose Lake. Under the circumstances of this case, the Washington County district court did not abuse its discretion or err as a matter of law by transferring Favors’s remaining claims to Carlton County.

4. Lack of evidentiary hearing

Favors also challenges the failure of the district courts in both counties to hold an evidentiary hearing on his claims. We do not address this challenge as it applies to the Carlton County district court because we have already concluded that the matter was not properly before that court when it issued its order of dismissal.

With regard to the proceeding in Washington County, “[a] petitioner is entitled to an evidentiary hearing only if a factual dispute is shown by the petition.” *Seifert v. Erickson*, 420 N.W.2d 917, 920 (Minn. App. 1988), *review denied* (Minn. May 18, 1988). Because no factual disputes existed concerning the issues determined by the Washington County district court, Favors was not entitled to an evidentiary hearing.

Affirmed in part and vacated in part.