

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1075**

Belford William Reitz, III, petitioner,  
Appellant,

vs.

Steve Hammer, et al.,  
Respondents.

**Filed March 3, 2014  
Affirmed  
Ross, Judge**

Chisago County District Court  
File No. 13-CV-13-225

Belford William Reitz, III, Rush City, Minnesota (pro se appellant)

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

Karen M. Robinson, Special Assistant Attorney General, Minneapolis, Minnesota (for respondents)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

**UNPUBLISHED OPINION**

**ROSS**, Judge

Belford Reitz, III, was convicted in 2002 of criminal sexual conduct and sentenced to a period of incarceration and ten years' mandatory conditional release for groping his

two young nieces. The department of corrections revoked his release after he violated several conditions, including refusing to undergo sex-offender treatment. Reitz filed a petition for habeas corpus, arguing that conditional release was not part of his sentence, that requiring treatment violates his Fifth Amendment rights, and that the department improperly revoked his release. Because Reitz's arguments have no legal support, we affirm.

### FACTS

Belford Reitz, III, fondled his sister-in-law's two minor daughters in 1999, and a jury convicted him in 2002 of two counts of criminal sexual conduct. *State v. Reitz*, No. C2-02-2230, 2003 WL 22434266, at \*1-2 (Minn. App. Oct. 28, 2003). The district court sentenced Reitz to 36- and 41-month prison terms, to be served concurrently. *Id.* at \*2. The district court informed him that he would serve at least two thirds of his sentence and spend the remaining third on supervised release, depending on his behavior while incarcerated. It also informed him twice that he would "be placed on a ten year conditional release period . . . upon completion of [his] sentence" because the sex offenses for which Reitz was convicted mandated conditional release.

The department of corrections released Reitz from prison in March 2005. It imposed various conditions on his release, including obtaining sex-offender treatment, avoiding contact with minors, not accessing the internet, and staying out of bars. His conditional release was revoked several times. Corrections officers most recently saw Reitz driving a woman and two young children around in his car in August 2011. They also found that Reitz possessed an internet-capable computer containing pornographic

files and a history of sexually oriented internet searches related to young girls. And Reitz had been working evenings in bars and consistently refused to undergo treatment aimed at sex offenders. A department of corrections hearing officer revoked Reitz's conditional release and sentenced him to 365 days' imprisonment. The officer noted that Reitz's incarceration could be extended until the end of his conditional-release period if he did not successfully complete treatment. Additional administrative hearings affirmed this decision and Reitz remains in custody.

Reitz filed postconviction and habeas corpus petitions challenging his sentence in 2011 and a separate habeas corpus petition in January 2013. The district court denied his 2011 petitions, and Reitz did not appeal. After the district court denied his January 2013 habeas petition, he appealed. We affirmed and the supreme court denied his request for further review. *Reitz v. Hammer*, No. 13-CV-13-78, 2013 WL 5976084 (Minn. App. Nov. 12, 2013), *review denied* (Minn. Dec. 31, 2013). Reitz also filed the present habeas corpus petition in March 2013, alleging that requiring him to undergo treatment would violate his right not to incriminate himself under the Fifth Amendment and that the no-contact-with-minors condition was too broad. The district court denied his petition, reasoning that the no-contact provision was permissible and that Reitz's Fifth Amendment rights were not implicated. Reitz appeals.

## **D E C I S I O N**

We give the district court's findings regarding a petition for a writ of habeas corpus "great weight" and will affirm if the evidence reasonably supports those findings. *Aziz v. Fabian*, 791 N.W.2d 567, 569 (Minn. App. 2010).

## I

Reitz contends that the district court did not actually or properly impose a period of conditional release, that the department of corrections encroached on the power of the judiciary by imposing conditional release, and that his period of incarceration “has been unlawfully extended.” Habeas corpus proceedings are not a venue for challenging a conviction or a sentence. *Breeding v. Utecht*, 239 Minn. 137, 139, 59 N.W.2d 314, 316 (1953). And we addressed this issue in Reitz’s appeal of his January 2013 habeas petition, concluding that his claims were improperly before the court and that, even if they had been properly presented, they were unfounded. *See Reitz v. Hammer*, 2013 WL 5976084, at \*2 n.4 (citing *State v. Schwartz*, 628 N.W.2d 134, 140–41 (Minn. 2001)). His claims are similarly unavailing here. The sentencing court expressly sentenced Reitz to a ten-year period of conditional release, which was required because of Reitz’s convictions for violating Minnesota Statutes section 609.343 (1998) more than once. *See* Minn. Stat. § 609.109, subd. 7(a) (1998). The district court ordered conditional release and we have previously rejected Reitz’s remaining arguments, so the postconviction court was correct to deny relief on these grounds.

## II

Reitz contests the department of corrections’ power to require him to complete a sex-offender treatment program. He maintains that treatment would require him to admit his offense, violating his Fifth Amendment right against self-incrimination, and that the department did not have the authority to mandate treatment at the time of his offense. Sex offenders cannot be compelled to enter a treatment program if doing so would require

them to forego their Fifth Amendment privilege against self-incrimination. *Johnson v. Fabian*, 735 N.W.2d 295, 310–12 (Minn. 2007). But this rule applies only if the offender’s admission could still be incriminating. *Id.* at 309. An offender cannot be compelled to admit his offense in treatment if a direct appeal of his conviction is outstanding or available or if he is still vulnerable to perjury charges. *Id.* at 310–12. Reitz’s convictions became final when we affirmed them in 2003 and he sought no further review. *See State v. Reitz*, No. C2-02-2230 (Minn. App. 2003). He also faces no risk of exposing himself to perjury charges because the statute of limitations for perjury is three years. *See* Minn. Stat. § 628.26(k) (2012). He is therefore no longer at risk of incriminating himself. Entering treatment would not implicate Reitz’s Fifth Amendment rights.

Reitz did not argue to the district court that the department of corrections lacked authority to require treatment at the time of his offense. We generally do not decide issues not brought before the habeas court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Because Reitz did not raise this issue in the habeas petition he now appeals, we will not consider it here.

### III

Reitz also challenges the department’s decision to revoke his conditional release. The department of corrections has broad authority to dictate the terms and conditions of release or incarceration of sex offenders during a term of conditional release. *Schwartz*, 628 N.W.2d at 138–39 (citing Minn. Stat. §§ 243.05, subds. 1–2, 244.05, subd. 2 (2000); Minn. R. 2940.0100 to .4500 (1997)). The commissioner of corrections may reincarcerate

any offender who violates his release conditions. *Id.* at 139. Because the department may require Reitz to obtain treatment, it may choose to imprison him for refusing treatment. Reitz also violated conditions unrelated to obtaining treatment, including engaging in contact with minors and using the internet to pursue his sexual interest in minors, and these violations provide sufficient independent grounds to affirm. We conclude that the department of corrections acted within its power by incarcerating Reitz for some or all of his remaining conditional release term.

**Affirmed.**