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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1478**

John Heggem, petitioner,  
Appellant,

vs.

Tom Roy, Commissioner of Corrections,  
Respondent.

**Filed April 30, 2012  
Affirmed  
Peterson, Judge**

Chisago County District Court  
File No. 13-CV-10-1204

Bradford Colbert, St. Paul, Minnesota (for appellant)

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

Krista J. Guinn Fink, Department of Corrections, St. Paul, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Collins,  
Judge.\*

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

## UNPUBLISHED OPINION

**PETERSON**, Judge

Appellant's intensive supervised release was revoked after appellant admitted that he violated four conditions of his release. In this appeal from the district court's denial of a petition for a writ of habeas corpus, appellant challenges respondent's decision to assign him a term of reimprisonment up to the expiration of his sentence. We affirm.

### FACTS

After pleading guilty to five counts of first-degree criminal sexual conduct, appellant John Heggem was committed to the custody of respondent Tom Roy, Commissioner of Corrections, on June 25, 1991. Appellant was sentenced to 316 months' imprisonment, but, following a direct appeal, his sentence was reduced to 300 months. *State v. Heggem*, No. C4-91-1910, 1992 WL 71989, at \*2 (Minn. App. Apr. 14, 1992), *review denied* (Minn. June 1, 1992). Appellant's sentence expires on December 24, 2015.

On March 20, 2008, appellant was released on intensive supervised release, subject to several conditions, one of which was to complete sex-offender programming. At the time of his release, appellant was designated as a level-III predatory offender.

On March 12, 2009, appellant was arrested for violating conditions of his release. At a revocation hearing on March 26, 2009, appellant admitted to the four alleged violations of the conditions of his release: (1) failure to refrain from purchase or possession of sexually explicit materials; (2) obtaining prescription for drugs designed to improve sexual function without prior documented approval of agent; (3) created/used

media method for personal contact and or advertisement for solicitation purposes without agent approval; and (4) failure to follow agent's/designee instructions. At the time of the hearing, appellant had not completed sex-offender treatment in the community.

A hearings-and-release officer revoked appellant's supervised release and assigned him 365 days in a correctional facility from the date of his arrest. Appellant was found to be a risk to the public under Minn. R. 2940.3800, subp. D (2011). The hearings officer found no mitigating factors but identified as aggravating factors appellant's previous violation of restructure, his status as an untreated level-III sex offender, the circumstances of his violations, and his decision to engage in high-risk behavior that mirrored his commitment offense. The hearings officer directed appellant to complete sex-offender programming during the 365-day incarceration period. The decision indicates that appellant was informed that it was the hearings officer's intent that appellant "successfully complete treatment prior to his release and failure to comply may result in him serving until the expiration of his sentence."

The hearings officer's decision included agent recommendations, which provided, in part, the following:

[Appellant] is an intimate danger to the community, he took steps to use alias, and to have a sexual relationship. He is a risk to the public. [Appellant] was participating in outpatient treatment and engaged in this behavior; obviously he is in need of a highly structured inpatient program. Agent requests [appellant's] release be revoked and he be directed to complete sex offender programming and if he fails to follow through agent recommends [appellant] remain in custody until the expiration of his sentence.

On December 1, 2009, appellant signed a Minnesota Department of Corrections treatment agreement in which he indicated that he would not participate in the Minnesota Sex Offender Program.

On January 25, 2010, a review hearing was held. The hearings-and-release officer noted that respondent has authority to revoke an offender's supervised release until the expiration of his sentence for violating release conditions if there is a finding that an offender poses a "risk to the public." Minn. R. 2940.3800, subp. D. The hearings officer found that appellant poses a "significant risk to the public" and assigned appellant to another 365 days of accountability. The hearings officer stated that the violations of appellant's supervised release were "extremely severe, [he] is a level 3 sex offender and he engaged in extremely high risk behavior while participating in community based sex offender treatment." The hearings officer also noted that appellant was eligible for sex-offender treatment, but refused to participate, and reiterated that, at the initial revocation of his supervised release, it was clear that failing to complete treatment could result in appellant serving until the expiration of his sentence. The hearings officer informed appellant that he would remain incarcerated until the expiration of his sentence unless he completed sex-offender treatment, and, upon completing treatment, his status as a person posing a risk to the public would be reviewed.

In October 2010, appellant filed a petition for a writ of habeas corpus, arguing that because he was convicted in 1991 and, at that time, the commissioner did not have authority to compel an inmate to undergo treatment, he is unlawfully being compelled to undergo sex-offender treatment. *See* Minn. Stat. § 244.03 (1991) (providing for

voluntary programs for inmates); *see also Rud v. Fabian*, 743 N.W.2d 295, 299-301 (Minn. App. 2007) (holding that section 244.03 does not permit commissioner to compel inmates convicted before 1999 to participate in rehabilitative programming), *review denied* (Minn. Mar. 26, 2008). The commissioner argued that Minn. Stat. § 244.03 and *Rud* are not applicable because the basis for appellant’s current incarceration is that he poses a risk to the public.

The district court denied appellant’s petition for a writ of habeas corpus. The court concluded that, because appellant violated his supervised release, the hearings officer had authority to revoke his supervised release and return him to prison for an appropriate period of time not to exceed the time remaining on his sentence. The court concluded that appellant had not shown that he was disciplined for refusing to participate in sex-offender treatment, and the commissioner has authority to deny rerelease while appellant poses a risk to public safety.

This appeal followed.

## **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.” *State ex. rel. Marlowe*, 755 N.W.2d 792, 794 (Minn. App. 2008) (citing Minn. Stat. § 589.01 (2006)). “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.” *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26-27 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

We give great weight to a district court's findings in ruling on a petition for habeas corpus and "uphold the findings if they are reasonably supported by the evidence." *Northwest. v. LaFleur*, 583 N.W.2d 589, 591 (Minn. App. 1998), *review denied* (Minn. Nov. 17, 1998). But we review questions of law de novo. *Guth*, 716 N.W.2d at 26.

Appellant does not raise a constitutional argument. He argues that respondent does not have authority to extend his rerelease date for the duration of his sentence for his refusal to participate in sex-offender treatment. But appellant's argument misconstrues the reason why he was returned to prison.

The hearings officer assigned appellant a term of reimprisonment up to the expiration of his sentence because the hearings officer found that appellant continued to pose a high risk to the public. Minn. Stat. § 244.05, subd. 3 (2010), provides:

If an inmate violates the conditions of the inmate's supervised release imposed by the commissioner, the commissioner may: . . .

(2) revoke the inmate's supervised release and reimprison the inmate for the appropriate period of time.

The period of time for which a supervised release may be revoked may not exceed the period of time remaining in the inmate's sentence . . . .

The administrative rule governing parole violations provides that a hearings officer who finds a releasee in violation of parole may revoke "supervised release and return the releasee to imprisonment for an appropriate period of time not to exceed the time remaining on the releasee's sentence." Minn. R. 2940.3700, subp. C (2011). And the administrative rule governing the revocation of supervised release provides:

Offenders who have violated the conditions of parole or supervised release and who have been returned to institutional status shall be assigned a release date and a term of reimprisonment, as follows: . . .

D. depending on the time remaining to be served on the sentence, the type of violation, and the needs of the offender, up to expiration of the sentence may be assigned as the term of reimprisonment if there is a finding of risk to the public or if repeated violations of the conditions of release occur and the releasee is determined to be unamenable to supervision by the executive officer of hearings and release.

Minn. R. 2940.3800 (2011).

The hearings officer found that appellant “poses a significant risk to the public.” In support of this finding, the hearings officer cited appellant’s current offense, his status as a level-III sex offender, his “extremely severe” violations of his supervised release, and the “extremely high risk behavior” he engaged in while on supervised release and participating in community based sex-offender treatment. Because the hearings officer found that appellant continues to pose a risk to the public, which appellant does not challenge on appeal, respondent has authority to reimprison appellant up to the expiration of his sentence.

Appellant argues that because he was convicted in 1991, under Minn. Stat. § 244.03 (1991) and *Rud*, the commissioner can neither compel him to undergo treatment nor impose a punishment for his refusal to do so. Appellant asserts that “[respondent] is clearly conditioning [his] release on his completing treatment and, by doing so [respondent] is forcing [him] into treatment.”

In *Rud*, this court held that the 1999 amendment to Minn. Stat. § 244.03, which gave the commissioner of corrections authority to require rehabilitative treatment, cannot

be applied to an inmate sentenced before 1999. 743 N.W.2d at 299-301. The commissioner

required Rud to enter sex-offender treatment, but Rud refused. Rud was served with a notice of violation of offender discipline regulation (ODR) 510, which prohibits an offender from refusing an order to participate in treatment. Following a disciplinary hearing, a hearing officer found Rud guilty of the violation and imposed a penalty of 270 days during which good time is not earned, which results in 90 days of lost good time and, as a result, 90 days of additional time that Rud must serve in prison.

*Id.* at 297. Because Rud was sentenced before 1999, the commissioner did not have statutory authority to extend Rud's length of imprisonment for refusing to participate in rehabilitative programming. *Id.* at 301.

But, unlike Rud, appellant has not been punished for refusing to participate in treatment. Appellant has lawfully been assigned a term of reimprisonment up to the expiration of his sentence because the hearings officer found that appellant poses a significant risk to the public. The hearings officer noted that the "initial decision allowed [appellant] an opportunity to be released prior to his expiration if he completed sex offender programming." The hearings officer reaffirmed the initial decision, making it clear that, if appellant chooses to complete sex-offender treatment, respondent will review whether appellant continues to pose a risk to the public.

The district court did not err in denying appellant's petition for a writ of habeas corpus.

**Affirmed.**