

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2006).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0230**

Alex Cortez Benson, petitioner,
Appellant,

vs.

Joan Fabian,
Respondent.

**Filed January 22, 2008
Affirmed
Peterson, Judge**

Rice County District Court
File No. 66-CV-06-1606

Alex Cortez Benson, OID #123889M, 1106 Linden Lane, Faribault, MN 55021 (pro se appellant)

Lori Swanson, Attorney General, Kelly Kemp, Assistant Attorney General, 900 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2128 (for respondent)

Considered and decided by Peterson, Presiding Judge; Willis, Judge; and Wright, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

This appeal is from an order denying a habeas corpus petition challenging the disciplinary sanction for termination from a mandated chemical-dependency treatment program, which resulted in 30 additional days of confinement. Pro se appellant argues

that extending his incarceration for violating a Department of Corrections disciplinary rule violated his constitutional rights. We affirm.

FACTS

While on supervised release in November 2003, appellant Alex Cortez Benson committed first-degree aggravated robbery. He was sentenced to 115 months in prison for the new offense and is incarcerated at the Minnesota Correctional Facility in St. Cloud.

Based on the results of a chemical-dependency assessment, Randy A. Jensen of the Minnesota Department of Corrections (DOC) recommended that appellant complete intensive primary treatment to address substance-abuse issues. Jensen's report noted that appellant participated in treatment in 2003 and reported total abstinence until a relapse, which lasted for several days and led up to the commission of the offense for which appellant is currently incarcerated. Jensen concluded that intensive primary treatment was needed based on the DSM-IV criteria, appellant's chemical use and chemical-dependency-program intervention history, the relationship of appellant's chemical use to the commission of the current offense, appellant's relapse/remission history, and criminogenic factors.

Two weeks after being admitted to a chemical-dependency treatment program, appellant was terminated from the program because he was involved in a fight with another inmate in the program. Appellant waived his right to a hearing and admitted that he violated offender disciplinary regulation (ODR) 510 by being terminated from the

treatment program. A 30-day disciplinary confinement period was imposed as a sanction for the major disciplinary violation.

Appellant is classified as a medium security risk, level three, because he has six custody-status points. Appellant cannot reduce his custody classification at this time because he is subject to a custody-status-point-reduction block as a result of the major disciplinary violation of failing to complete treatment.

Appellant filed a petition for habeas corpus relief in the district court. The district court denied appellant's petition. This appeal followed.

D E C I S I O N

The district court's findings in ruling on a petition for habeas corpus are entitled to great weight and will be upheld if reasonably supported by the evidence. *Northwest v. LaFleur*, 583 N.W.2d 589, 591 (Minn. App. 1998), *review denied* (Minn. Nov. 17, 1998). Questions of law, however, are subject to de novo review. *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

A writ of habeas corpus is a statutory civil remedy available to obtain relief from unlawful imprisonment or restraint. Minn. Stat. § 589.01 (2006); *see also Loyd v. Fabian*, 682 N.W.2d 688, 690 (Minn. App. 2004) (construing Minn. Stat. § 589.01 (2000)), *review denied* (Minn. Oct. 19, 2004). "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." *Guth*, 716 N.W.2d at 26-27.

I.

Appellant argues that extending his incarceration for 30 days for failing a treatment program that was not ordered by the district court at sentencing violated the separation-of-powers doctrine. Appellant contends that because the legislature has the power to establish what acts are criminal and to establish the punishment for those acts and the judiciary regulates the method by which the guilt or innocence of the accused is determined, the DOC cannot increase his punishment by promulgating a disciplinary rule and extending his incarceration for violating the rule.

But the legislature has granted the commissioner of corrections broad statutory authority to “prescribe reasonable conditions and rules for [an inmate’s] employment, conduct, instruction, and discipline.” Minn. Stat. § 241.01, subd. 3a(b) (2002); *see also* Minn. Stat. § 244.04, subd. 2 (2002) (directing commissioner to adopt rules governing inmate discipline).

Minn. Stat. § 244.03 (2002) states:

The commissioner shall provide appropriate mental health programs and vocational and educational programs with employment-related goals for inmates. The selection, design and implementation of programs under this section shall be the sole responsibility of the commissioner, acting within the limitations imposed by the funds appropriated for such programs.

....

The commissioner may impose disciplinary sanctions upon any inmate who refuses to participate in rehabilitative programs.

Minn. Stat. § 244.05, subd. 1b(a) (2002), authorizes the commissioner to impose a disciplinary confinement period, which extends the time of incarceration, for the violation of any disciplinary rule adopted by the commissioner or refusal to participate in a rehabilitative program required under section 244.03.

Appellant violated ODR 510, which states:

No offender shall refuse an order from staff to enter into treatment or refuse to participate in the pre-treatment interview after having been directed to participate by a Program Review Team. No offender ordered to complete treatment will be allowed to voluntarily terminate his/her program participation and involuntary termination for any reason will be a violation of this rule.

Appellant acknowledges that under Minn. Stat. § 244.03, “the legislature has granted the Commissioner broad [discretion] in administering rehabilitative programming for inmates,” but he argues that Minn. Stat. § 244.03 only authorizes the commissioner to provide programs with “employment-related goals,” and, therefore, the commissioner lacks authority to impose a disciplinary confinement period for failure to complete a treatment program that is not employment related.

When a habeas petition presents a question of statutory construction, our review is de novo. *State ex rel. Holecek v. Ross*, 472 N.W.2d 185, 186 (Minn. App. 1991). We construe the words and phrases in a statute according to the rules of grammar and common and approved usage. Minn. Stat. § 645.08(1) (2006). Because the term “mental health programs” stands alone, we conclude that the phrase “employment-related goals” modifies only “vocational and educational programs.” Accordingly, it is within the commissioner’s statutory authority to impose a disciplinary sanction for the failure to

complete a chemical-dependency treatment program regardless of whether the program has an employment-related goal.

Appellant does not challenge the constitutionality of Minn. Stat. § 244.03 or Minn. Stat. § 244.05, subd. 1b(a), and the authority cited by appellant does not address the separation-of-powers issue that he raises. Therefore, appellant has not shown that applying ODR 510 to him violated the separation-of-powers doctrine.

Appellant argues that by requiring him to participate in a chemical-dependency assessment after the district court ordered an assessment and found no need to order appellant to participate in treatment, the DOC placed him twice in jeopardy, in violation of Minn. Const. art. I, § 7, which states, “no person shall be put twice in jeopardy of punishment for the same offense.” But the supreme court has explained that

just as the revocation of probation or parole is regarded as a reinstatement of the original sentence rather than punishment for more recent misconduct, the denial of good time credits relates to the sentence the inmate is currently serving. Thus, loss of good time cannot be considered as a second “punishment,” since it simply requires the inmate to serve more of the underlying sentence in prison, and does not extend the total period of correctional supervision.

State v. McKenzie, 542 N.W.2d 616, 620 (Minn. 1996) (citations omitted). Appellant has not shown that applying ODR 510 to him violated his right to be free from double jeopardy.

Regarding the factual basis supporting the requirement that appellant undergo treatment, the district court found:

[T]he DOC had a number of articulated reasons for mandating [appellant’s] completion of chemical dependency

treatment – [appellant] had a history of drug and alcohol use, [appellant] admitted to relapsing while he was on supervised release, [appellant's] relapse lasted for several days and led up to the commission of the offense he is currently incarcerated for, [appellant] has a minimizing attitude towards problems associated with his chemical use, and despite his successful completion of prior treatment programming, [appellant] still relapsed.

The record supports this finding, which shows the existence of valid reasons for requiring appellant to undergo chemical-dependency treatment.

II.

Appellant argues that the disciplinary process violated his due-process rights.

When engaging in a due process analysis, a court must conduct two inquiries. First, the court must determine whether the complainant has a liberty or property interest with which the state has interfered. Second, if the court finds a deprivation of such an interest, it must determine whether the procedures attendant upon that deprivation were constitutionally sufficient.

Carrillo v. Fabian, 701 N.W.2d 763, 768 (Minn. 2005) (citations omitted).

Appellant does not have a fundamental right to refuse treatment. *State ex rel. Morrow v. LaFleur*, 590 N.W.2d 787, 796 (Minn. 1999), *overruled on other grounds as recognized in Johnson v. Fabian*, 735 N.W.2d 295, 304 (Minn. 2007). When a fundamental right is not at stake, “substantive due process requires only that the legislative enactments not be arbitrary or capricious or, stated another way, that they be a reasonable means to a permissive object.” *Id.* (quoting *State v. Behl*, 564 N.W.2d 560, 567 (Minn. 1997)). As the district court found, the requirement that appellant complete

treatment “is rationally related to a legitimate penological interest of rehabilitating [appellant] for his return to society.”

Appellant does, however, have a protected liberty interest in his supervised-release date.

[U]nder Minnesota’s sentencing scheme, there is a presumption from the moment that a court imposes and explains the sentence that the inmate will be released from prison on a certain date – and that presumption is overcome only if the inmate commits a disciplinary offense. Concluding that extension of incarceration represents a significant departure from the basic conditions of the inmate’s sentence, we [have] held that a Minnesota inmate has a protected liberty interest in his supervised release date that triggers a right to procedural due process before that date can be extended.

Johnson, 735 N.W.2d at 302 (quotations omitted).

When protected interests are implicated, prison authorities must provide an appropriate level of due process. *Carrillo*, 701 N.W.2d at 768. Inmates are entitled to the following procedural requirements in a prison disciplinary hearing: (1) written notice of the claimed violation at least 24 hours before the disciplinary hearing; (2) an opportunity to present documentary evidence and call witnesses if it will not jeopardize institutional safety or correctional goals; and (3) a written statement from an impartial decision maker explaining the evidence and reasoning relied upon for the disciplinary action. *Hrbek v. Nix*, 12 F.3d 777, 780 (8th Cir. 1993) (citing *Wolff v. McDonnell*, 418 U.S. 539, 563-67, 94 St. Ct. 2963, 2978-80 (1974)). We review de novo whether a party was afforded procedural due process of law. *Comm’r of Natural Res. v. Nicollet County*

Pub. Water/Wetlands Hearing Unit, 633 N.W.2d 25, 29 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001).

Appellant received notice of the violation on December 14, 2005. The notice alleged that appellant violated ODR 510 and stated that a hearing was scheduled for December 21, 2005. Appellant also received a list of offender rights and a witness request list. Appellant waived his right to a hearing and admitted the violation.

The district court concluded:

[Appellant] argues that he waived these rights before he really understood that he had a right to a disciplinary hearing before an impartial hearing officer. He further asserts that the discipline staff member who served [him] with the Notice of Violation forced [him] into admitting the violation and waiving his rights because the staff member told [him] that he would receive forty-five days of lost good time instead of thirty days of lost good time if he denied the violation and proceeded to a disciplinary hearing. Again, [appellant] has never asserted that he completed his DOC-mandated chemical dependency treatment; he only argues that the DOC never had authority to require him to complete the treatment program. Because this argument has no merit, [appellant] essentially concedes that he committed a disciplinary violation. Even if the Court found that [appellant's] procedural due process rights were violated by the discipline staff member, [appellant] would only be entitled to the disciplinary hearing that he asserts he was denied. This Court finds as a matter of law that [appellant] failed to complete his mandated treatment, which is a major disciplinary violation justifying the loss of thirty days of good time. Granting [appellant] a new violation hearing will only expose him to a greater consequence for his violation.

We adopt the district court's well-reasoned analysis. Appellant has not identified any basis for obtaining relief from the 30 additional days of confinement imposed as a disciplinary sanction for violating ODR 510.

III.

This court has rejected the argument that a custody-status classification implicates a liberty interest that would support a constitutional challenge. *See State ex rel. McMaster v. Young*, 476 N.W.2d 670, 674 (Minn. App. 1991) (holding that inmate has “no liberty interest in his custody status classification”), *review denied* (Minn. Dec. 13, 1991). The case relied on by appellant to support his argument to the contrary, *McKune v. Lile*, 536 U.S. 24, 122 S. Ct. 2017 (2002), is not on point.

The district court did not err in denying appellant’s habeas corpus petition.

Affirmed.