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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0819**

Akili Shakur, a/k/a, Darnell Jackson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 21, 2009
Affirmed
Peterson, Judge**

Hennepin County District Court
File No. 94008216

Akili Shakur, OID # 177531, 1000 Lakeshore Drive, Moose Lake, MN 55767 (pro se appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael O. Freeman, Hennepin County Attorney, Michael K. Walz, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Peterson, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this pro se appeal challenging the denial of appellant's request for clarification and correction of his sentence, appellant argues that (1) the district court erred in treating the request as a petition for postconviction relief, (2) the commissioner of corrections lacked authority to assign appellant to intensive supervised release, and (3) the assignment violated the constitutional prohibition against ex post facto laws. We affirm.

FACTS

Appellant Akili Shakur, a/k/a, Darnell Jackson, pleaded guilty to committing second-degree intentional murder and was sentenced to an executed term of 300 months in prison. The offense occurred in October 1993, and appellant was sentenced in June 1994. As part of the release plan developed for appellant, the Minnesota Commissioner of Corrections determined that appellant would be assigned to intensive supervised release (ISR).

In February 2008, appellant filed a pleading captioned as a motion for clarification of sentence under Minn. R. Crim. P. 27.03, subd. 4, and correction of sentence under Minn. R. Crim. P. 27.03, subd. 9. Appellant requested clarification and correction of his sentence on grounds that (1) the commissioner exceeded her authority in assigning him to ISR and (2) the assignment violates the constitutional prohibition against ex post facto laws. Respondent State of Minnesota and the district court treated the pleading as a petition for postconviction relief. The district court denied appellant relief without a hearing. This appeal followed.

DECISION

Minn. R. Crim. P. 27.03

Relying on Minn. R. Crim. P. 27.03, subd. 4(E)(5), appellant argues that the district court erred in treating his motion for correction of his sentence as a postconviction petition and denying relief without conducting a hearing. Appellant's argument overlooks the difference between probation and supervised release. Probation is imposed when a sentence is stayed. Minn. Stat. § 609.135, subd. 1(2) (2008). Supervised release occurs when a sentence has been executed and the offender has completed the term of imprisonment. Minn. Stat. § 244.05, subd. 1 (2008). Accordingly, Minn. R. Crim. P. 27.03, subd. 4(E), which states that “[i]f the court elects to stay imposition or execution of sentence . . . [t]he defendant should be told that in the event of a disagreement with the probation agent as to the terms and conditions of probation, the defendant can return to the court for clarification if necessary,” does not apply to appellant's executed sentence.

Because appellant's sentence was executed and he seeks clarification or correction of a supervised-release condition, the district court did not err in treating appellant's motion as a postconviction petition. *See Kachina v. State*, 744 N.W.2d 407, 408 (Minn. App. 2008) (defendant filed motion to correct sentence by removing ISR requirement, which district court construed as a postconviction petition and denied; defendant filed petition for writ of prohibition with this court, which this court construed as an appeal from a postconviction order).

Commissioner's authority to assign appellant to ISR

An evidentiary hearing is not required on a postconviction petition unless facts are alleged that, if proved, would entitle the petitioner to the requested relief. *Townsend v. State*, 582 N.W.2d 225, 229 (Minn. 1998). We review the postconviction court's application of law de novo. *Williams v. State*, 692 N.W.2d 893, 896 (Minn. 2005).

Appellant argues that because conditions of ISR are similar to probation conditions imposed under Minn. Stat. § 609.135, the commissioner lacks authority to assign an offender to ISR. Again, appellant's argument overlooks the difference between probation and supervised release. Authority over probation terms rests exclusively with the court and may not be delegated. *State v. Henderson*, 527 N.W.2d 827, 830 (Minn. 1995). But the legislature has granted authority over supervised release to the commissioner of corrections, and the supreme court has held that the commissioner's authority over supervised release does not violate the separation-of-powers doctrine. *State v. Schwartz*, 628 N.W.2d 134, 139-41 (Minn. 2001); *see* Minn. Stat. § 244.05 (2008) (governing supervised release). For these reasons, this court has rejected the argument that the commissioner lacks authority to assign an offender to ISR. *Kachina*, 744 N.W.2d at 409.

Appellant also argues that his assignment to ISR violated due-process principles applicable to the decision to revoke probation. Under *Kachina*, this argument also fails.

Ex post facto clause

“An ex post facto law ‘renders an act punishable in a manner in which it was not punishable when it was committed.’” *State v. Manning*, 532 N.W.2d 244, 247 (Minn.

App. 1995) (quoting *Starkweather v. Blair*, 245 Minn. 371, 386, 71 N.W.2d 869, 879 (1955)), *review denied* (Minn. July 20, 1995). In order to constitute an ex post facto law, a statute must “(1) punish as a crime an act which was innocent when committed; (2) increase the burden of punishment for a crime after its commission; or (3) deprive one charged with a crime of a defense that was available when it was committed.” *Id.* at 247.

Appellant argues that his assignment to ISR violated the constitutional prohibition against ex post facto laws because the ISR program did not exist when appellant was sentenced in 1994. But under the statute in effect when appellant committed and was sentenced for his offense, the commissioner had authority to assign an offender to ISR for all or part of the offender’s supervised-release term. Minn. Stat. § 244.05, subd. 6 (1992). Appellant’s assertion that the ISR policy was modified by corrections officials following appellant’s conviction is insufficient to establish a violation of the prohibition against an ex post facto law. *See Chauvin v. Erickson*, 998 F.2d 617, 619 (8th Cir. 1993) (new rule requiring inmate to work to earn good time is not ex post facto law when prior regulations allowed discipline for refusing a work order).

The district court did not err in denying appellant’s postconviction petition without a hearing.

Affirmed.