STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1054

Alvin A. Lamm, petitioner,
Appellant,

vs.

Lucinda Jesson, Commissioner of Human Services, et al.,
Respondents.

Filed December 12, 2011
Affirmed
Stauber, Judge

Carlton County District Court
File No. 09CV11553

Alvin A. Lamm, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Matthew Frank, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Larkin, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

Appellant challenges the denial of his petition for a writ of habeas corpus. Because appellant's challenges are not properly raised in a habeas petition, are not properly before this court on appeal, and are otherwise without merit, we affirm.

FACTS

Appellant Alvin A. Lamm is confined at the Minnesota Sex Offender Program in Moose Lake. Appellant was indeterminately committed as a sexually dangerous person and as a sexual psychopathic personality on October 25, 2005. No appeal was taken from the commitment order.

On March 21, 2011, appellant petitioned for a writ of habeas corpus, challenging the legality of his commitment by claiming that the civil-commitment action was filed after the expiration of the statute of limitations provided in Minn. Stat. § 628.26 (2010). The district court found that no factual dispute existed, ruled that the statute of limitations did not apply to civil-commitment proceedings, and denied appellant's petition without a hearing. This appeal follows.

D E C I S I O N

"Committed persons may challenge the legality of their commitment through habeas corpus. But the only issues the district court will consider are constitutional and jurisdictional challenges." *Joelson v. O'Keefe*, 594 N.W.2d 905, 908 (Minn. App. 1999) (citations omitted), *review denied* (Minn. July 28, 1999). A petitioner must set forth sufficient facts in his petition to establish a prima facie case for habeas relief. *State ex rel. Fife v. Tahash*, 261 Minn. 270, 271, 111 N.W.2d 619, 620 (1961). A petitioner may not use habeas proceedings to obtain review of an issue previously raised, to substitute for an appeal, or to collaterally attack a judgment. *Joelson*, 594 N.W.2d at 908. When the facts are undisputed, we review an order denying habeas relief under a de novo standard. *Id.*

Appellant argues that the district court abused its discretion by denying his petition without holding an evidentiary hearing. However, it is well established that an evidentiary hearing is not required when there is no factual dispute to be resolved. *Seifert v. Erickson*, 420 N.W.2d 917, 920 (Minn. App. 1988), *review denied* (Minn. May 18, 1988). As in *Seifert*, appellant's petition presents a purely legal question; to wit: the construction and application of a statute of limitations. The facts of the case are undisputed, and merely establish the procedural history of appellant's case. Because the petition does not establish a factual dispute, we conclude that no evidentiary hearing was required and appellant's arguments to the contrary are unavailing.

I. Minn. Stat. § 628.26

Appellant's principal argument is that his civil commitment is rendered illegal because the proceeding was not commenced within the limitations period expressed in Minn. Stat. § 628.26(e). Under the statute:

> Indictments or complaints for violation of sections 609.342 to 609.345 if the victim was under the age of 18 years at the time the offense was committed, shall be found or made and filed in the proper court within the later of nine years after the commission of the offense or three years after the offense was reported to law enforcement authorities.

Minn. Stat. § 628.26(e).

As an initial matter, appellant may not raise his statute-of-limitations argument in a habeas proceeding. The Minnesota Supreme Court has recognized the distinction between rules governing subject-matter jurisdiction and inflexible claim-processing rules. *Reed v. State*, 793 N.W.2d 725, 731 (Minn. 2010) (citing *Rubey v. Vannett*, 714 N.W.2d

417, 422 (Minn. 2006)). And the supreme court has cautioned against using the term "jurisdictional" when referring to time prescriptions—even rigid ones—noting that the jurisdictional label should be reserved for prescriptions affecting "a court's adjudicatory authority." *In re Civil Commitment of Giem*, 742 N.W.2d 422, 427 n.6 (Minn. 2007). Notably, the supreme court held in *Reed* that Minn. Stat. § 628.26—the statute upon which appellant's habeas petition is based—is a claim-processing rule and not "a jurisdictional rule that deprives a district court of its power to adjudicate a case." 793 N.W.2d at 731. And the United States Supreme Court has expressly held that a statue-of-limitations defense is not jurisdictional.[1] *Day v. McDonough*, 547 U.S. 198, 205, 126 S. Ct. 1675, 1681 (2006).

We note that we have held that "[t]he scope of inquiry in habeas corpus proceedings is limited to constitutional issues, jurisdictional challenges, claims that confinement constitutes cruel and unusual punishment, and *claims that confinement violates applicable statutes*." *Loyd v. Fabian*, 682 N.W.2d 688, 690 (Minn. App. 2004) (emphasis added), *review denied* (Minn. Oct. 19, 2004). But we recently abrogated that holding, concluding that "it is appropriate to abide by our statement in *Joelson* that a habeas petition must allege either a lack of jurisdiction or a violation of a constitutional right, for that statement is the more accurate reflection of the supreme court's caselaw." *Beaulieu v. Minn. Dept. of Human Servs.*, 798 N.W.2d 542, 548 (Minn. App. 2011),

[1] Minnesota appellate courts have, at times, considered a statute-of-limitations argument in the context of whether the district court had jurisdiction in a habeas proceeding. *See, e.g., Kubus v. Swenson*, 242 Minn. 425, 426 65 N.W.2d 177, 177 (1954). But *Kubus* was considered well before *Day* and *Reed*, both of which conclusively hold that the statute of limitations is not a jurisdictional rule.

review granted (Minn. July 19, 2011). We therefore apply the *Joelson-Beaulieu* restriction on challenges that may be raised in a petition for habeas corpus, rather than the more expansive rule that we expressed in *Loyd*.

Because a statute-of-limitations defense is not jurisdictional in nature and appellant alleges no constitutional challenge based on the expiration of the allegedly applicable statute of limitations, it is not properly raised in a habeas proceeding. *See Joelson*, 594 N.W.2d at 908 (commenting that the district court may only consider constitutional and jurisdictional challenges in a habeas proceeding challenging civil commitment).

Moreover, even if appellant's statute-of-limitations argument may be properly raised in a habeas petition, it nonetheless fails on the merits. Appellant's argument rests on his assertion that the nine-year statute of limitations expressed in Minn. Stat. § 628.26 applies to civil-commitment proceedings. This argument is belied by the language of the statute.

"When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16 (2010). And if a statute, construed according to ordinary rules of grammar, is unambiguous, a reviewing court may engage in no further statutory construction and must apply its plain meaning. *State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996).

By its plain language, the nine-year limitations period applies only to "[i]ndictments or complaints for violation of sections 609.342 to 609.345." Minn. Stat.

§ 628.26(e). An indictment is "an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offense." Minn. Stat. § 628.01 (2010). A complaint is "a written signed statement of the facts establishing probable cause to believe that the charged offense has been committed and that the defendant committed it." Minn. R. Crim. P. 2.01, subd. 1.

Conversely, a civil-commitment proceeding is initiated by a county attorney preparing a petition executed by a person having knowledge of the facts. Minn. Stat. § 253B.185, subd. 1(b) (2010). Civil commitment provides treatment for those who are determined to be mentally ill, dangerous to the public, sexually dangerous persons (SDP), and sexual-psychopathic personalities (SPP). Minn. Stat. § 253B.185 (2010). And the supreme court has repeatedly held that civil commitment is remedial—as opposed to punitive—and the primary goal is treatment rather than detention. *Call v. Gomez*, 535 N.W.2d 312, 319–20 (Minn. 1995). Caselaw clearly indicates that civil-commitment proceedings are civil, not criminal in nature. *Kansas v. Hendricks*, 521 U.S. 346, 369, 117 S. Ct. 2072, 2086 (1997) (holding that double-jeopardy clause of Fifth Amendment does not apply in civil-commitment proceedings).

By its plain language, application of Minn. Stat. § 628.26(e) is restricted to addressing violations of the criminal code. It does not reference the civil-commitment statutes, and we may not add to the statute "what the legislature purposely omits or inadvertently overlooks." *Ullom v. Indep. Sch. Dist. No. 112*, 515 N.W.2d 615, 617 (Minn. App. 1994) (citation and quotation omitted). Because civil commitment arises out of a need for treatment—and not to address violations of certain sections of the criminal

code—the statute of limitations expressed in Minn. Stat. § 628.26 has no application in a civil-commitment proceeding. The district court therefore did not err by denying appellant's petition for a writ of habeas corpus.

II. Minn. Stat. § 609.1351

Appellant also argues on appeal that the fact that the district court did not conclude that a civil-commitment petition was necessary when sentencing him in 1993 renders his current commitment illegal, relying on Minn. Stat. § 609.1351 (2010). The statute provides that when a person is sentenced for criminal sexual conduct, the district court shall make a preliminary determination whether a petition under the civil-commitment statutes is appropriate and include that determination as part of the sentencing order. Minn. Stat. § 609.1351.[2]

Appellant's initial habeas petition filed in the district court, however, does not raise any claim under Minn. Stat. § 609.1351. An appellate court will generally not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Because appellant did not raise his section 609.1351 argument to the district court, it is not properly before this court on appeal. Moreover, as expressed above, a civil-commitment patient may only raise constitutional or jurisdictional challenges to his commitment in a habeas proceeding, not challenges based on alleged statutory violations. *See Beaulieu*, 798 N.W.2d at 548 (abrogating rule allowing a civil-commitment patient to raise a statutory argument in a habeas

[2] The current statute is substantively identical to the statute as it existed at the time of appellant's sentencing in 1993. *Compare* Minn. Stat. § 609.1351 (2010) *with* Minn. Stat. § 609.1351 (1992).

proceeding). Therefore, even if the argument had been raised in the district court, appellant may not assert an alleged violation of Minn. Stat. § 609.1351 to challenge his civil commitment in a habeas proceeding.

Finally, Minn. Stat. § 609.1351 does not entitle appellant to habeas relief because appellant's argument is without merit. He appears to argue that because the district court concluded that no civil-commitment petition was appropriate at appellant's sentencing hearing in 1993, the later filing of the petition in 2004 violated the statute. But he is unable to cite to any authority for the proposition that this *preliminary* determination under section 609.1351 precludes a different determination at some future date.

Furthermore, in *In re Ashman*, the supreme court addressed whether a defendant who had pleaded guilty in exchange for an agreement that he would not be referred for civil commitment at the time of sentencing may nonetheless be subject to a civil-commitment proceeding filed at the end of his sentence. 608 N.W.2d 853, 854 (Minn. 2000). The supreme court, concluding that the terms of the plea agreement were satisfied, recognized the distinction between an initial determination by the district court under Minn. Stat. § 609.1351 and a subsequent decision that civil commitment may be appropriate. *Id.* at 858–59. Because the district court's preliminary determination that a petition under the civil-commitment statutes is unnecessary does not preclude a later filing of a civil-commitment proceeding, appellant's argument is unavailing.

Affirmed.