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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1757**

James M. Vogel,
Appellant,

vs.

Tom Roy,
Commissioner of Corrections, et al.,
Respondents

**Filed July 9, 2012
Affirmed
Muehlberg, Judge***

Washington County District Court
File No. 82-CV-11-4018

James Mark Vogel, Bayport, Minnesota (pro se appellant)

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

Krista Jean Guinn Fink, Minnesota Department of Corrections, St. Paul, Minnesota (for respondents)

Considered and decided by Stauber, Presiding Judge; Schellhas, Judge; and Muehlberg, Judge.

* 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UNPUBLISHED OPINION

MUEHLBERG, Judge

James M. Vogel appeals from the denial of his petition for a writ of habeas corpus. He challenges the imposition of an extended term of imprisonment as a disciplinary sanction for his refusal to participate in a chemical-dependency treatment program. He maintains that the sanction violated his constitutional rights because he was unable to participate in the program due to a disabling medical condition. We affirm.

FACTS

In August 2009, appellant was committed to the department of corrections for a 65-month sentence following his conviction of first-degree driving while impaired. About a month later, he was diagnosed with mantle-cell lymphoma, an aggressive and terminal form of cancer. Appellant underwent a bone-marrow transplant at the Mayo Clinic in Rochester and returned to custody in August 2010. Nearly two months later, appellant was interviewed for admission into the TRIAD chemical-dependency treatment program. He had been recommended for participation in the program pursuant to a chemical-dependency assessment. During the interview, appellant refused to sign any papers for admission into the program.

Respondent-commissioner initiated disciplinary proceedings against appellant for his refusal to participate in a recommended treatment program. Following a disciplinary hearing, the prison officials found by a preponderance of the evidence that appellant refused to participate in the program, which was a violation of the offender discipline regulations. They rejected appellant's argument that his Fifth Amendment privilege

against self-incrimination would be infringed by his participation in the program, specifically finding that the program did not require participants to admit to a crime. They also found that appellant's medical condition would not preclude him from participating in the program. The hearing officer imposed 40 days of extended incarceration as a sanction, and the prison warden affirmed the sanction following an internal appeal.

Appellant filed a petition for a writ of habeas corpus in Anoka County District Court, challenging the imposition of extended incarceration and raising Fifth and Eighth Amendment claims. The district court denied the petition.

Appellant filed a second habeas petition, this time in Washington County District Court. He challenged the same disciplinary sanction arising from his refusal to participate in the chemical-dependency program. The district court denied the petition, concluding that the commissioner acted within his broad statutory authority to impose disciplinary sanctions and that appellant failed to establish any Eighth Amendment violations. This appeal follows.

DECISION

Habeas corpus is a civil remedy that permits inmates to seek "relief from imprisonment or restraint." Minn. Stat. § 589.01 (2010). Prisoners may use a habeas petition to raise claims involving constitutional rights, to challenge restraints on their liberty, and to challenge the conditions of confinement. *Roth v. Comm'r of Corr.*, 759 N.W.2d 224, 227 (Minn. App. 2008). On appeal from the denial of a habeas petition, we accord the district court's factual findings great deference and will sustain them as long

as they are “reasonably supported by the evidence.” *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

Appellant first argues that the district court erred in denying his habeas petition because the disciplinary sanction violated his Eighth Amendment right to be free from cruel and unusual punishment. To establish a *prima facie* violation of the Eighth Amendment, habeas petitioners must allege “present and continuing mistreatment amounting to cruel and unusual punishment.” *Kelsey v. State ex rel. Erickson*, 320 N.W.2d 438, 439 (Minn. 1982).

In the context of prison disciplinary regulations, it is well established that prisons “may adopt reasonable restrictions governing the conduct of the inmates.” *Wilkinson v. McManus*, 298 Minn. 541, 541, 214 N.W.2d 671, 672 (1974). Such restrictions run afoul of the Eighth Amendment only if they “shock the general conscience of the community or are intolerable in fundamental fairness.” *Id.* Similarly, to allege an Eighth Amendment violation stemming from insufficient medical care, an inmate must establish that prison officials exhibited “deliberate indifference” to the prisoner’s serious medical needs. *Dulany v. Carnahan*, 132 F.3d 1234, 1239 (8th Cir. 1997).

Appellant’s argument centers on his contention that the sanction constituted cruel and unusual punishment because his medical condition precluded him from participating in the treatment program. But the record contains no evidence in support of this argument. After reviewing the hearing officer’s decision and speaking with the prison medical staff, the prison warden expressly found that appellant’s medical condition would not interfere with his participation in the program. When appellant filed an

internal disciplinary appeal in November 2010, he conceded that his cancer was in remission. The letters from appellant's physicians, both dated months after the disciplinary hearing, do not state that appellant was medically unfit to participate; they simply indicate that it would have been difficult for him to do so.

Moreover, appellant does not allege that the prison officials failed to provide for his medical needs, much less deliberately disregarded them. To the contrary, he received a conditional medical release to undergo a bone-marrow transplant at the Mayo Clinic. The disciplinary measures imposed here do not shock the conscience or amount to a denial of fundamental fairness. Forty days of extended incarceration is not unreasonable or excessive. As a result, appellant has not alleged sufficient facts to raise a *prima facie* Eighth Amendment claim.

Appellant next argues that the imposition of extended incarceration infringed on his Fifth Amendment right to remain silent because the treatment program required participants to admit to their crimes, and appellant's conviction was pending appeal at the time he refused admission. Appellant relies on *Johnson v. Fabian*, in which the Minnesota Supreme Court held that the imposition of extended incarceration for the inmates' failure to participate in a sex-offender treatment program infringed on their Fifth Amendment privilege against self-incrimination. 735 N.W.2d 295, 309, 311–12 (Minn. 2007). Important to that decision, however, was the undisputed fact that the participants were required to admit to their crimes as a condition of the sex-offender treatment program. *Id.* at 298. By contrast, the record here establishes that the TRIAD chemical-dependency program does *not* require participants to admit to any crimes.

Appellant also challenges the validity of the disciplinary regulation itself. The commissioner possesses statutory authority to impose disciplinary sanctions for an inmate's refusal to participate in recommended treatment programs. Minn. Stat. § 244.03 (2010). The disciplinary regulation at issue here effectuates that authority, and also advances the state's keen interest in establishing institutional order and promoting other remedial goals. *See State v. McKenzie*, 542 N.W.2d 616, 620 (Minn. 1996) (recognizing the state's interests in imposing and enforcing prison disciplinary regulations).

Appellant next argues that the disciplinary sanction violated the federal Americans with Disabilities Act (ADA) because the prison officials discriminated against him on the basis of his medical disability. As appellant did not raise this argument below, it has not been preserved for appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that only issues presented to and considered by the district court are considered on appeal). In any event, his argument is unavailing. An ADA claim may not be raised in a habeas corpus petition, as it does not provide a defense to the imposition of prison discipline. *See generally* 42 U.S.C. § 12132 (2006) (precluding public entities from discriminating against individuals on basis of disability); *Penn. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 208–09, 118 S. Ct. 1952, 1954 (1998) (addressing inmate's ADA claim, raised in separate civil suit, challenging prison official's refusal to admit him into "boot camp" program because of his medical disability).

Finally, appellant appears to present a procedural due process argument. As he raises this argument for the first time on appeal, it has not been preserved for appellate review. *See Thiele*, 425 N.W.2d at 582. In any event, appellant does not deny that he

was afforded prior written notice of a violation, the opportunity to present evidence and call witnesses at a disciplinary hearing, a written explanation for the disciplinary action, and internal review through appeal to the prison warden. These safeguards comport with the requirements of procedural due process in the prison discipline context. *See Wolff v. McDonnell*, 418 U.S. 539, 563–67, 94 S. Ct. 2963, 2978–80 (1974) (setting forth minimum requirements for procedural due process in the prison discipline context).

Because appellant’s arguments are without merit, the district court did not err in denying his petition for a writ of habeas corpus.

Affirmed.