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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0328**

Terrance Alfonso Dudley, petitioner,
Appellant,

vs.

Tom Roy,
Respondent.

**Filed September 24, 2012
Affirmed
Wright, Judge**

Washington County District Court
File No. 82-CV-11-7177

Terrance Alfonso Dudley, Bayport, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Kelly S. Kemp, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Wright, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

In this appeal from the district court's denial of his petition for a writ of habeas corpus, appellant argues that the Department of Corrections (the department) violated his constitutional rights when it extended his term of imprisonment by 10 days as a penalty for a disciplinary offense. Because appellant's arguments are without merit, we affirm.

FACTS

Following appellant Terrance Alfonso Dudley's conviction of first-degree attempted criminal sexual conduct in 2007, the district court sentenced Dudley to 90 months' imprisonment. *Dudley v. Symmes*, Civ. No. 11-1422, 2012 WL 266155, at *1 (D. Minn. Jan. 5, 2012); *State v. Dudley*, No. A07-1843, 2009 WL 112845, at *1-2 (Minn. App. Jan. 20, 2009), *review denied* (Minn. Mar. 31, 2009). In September 2011, while Dudley was serving his sentence at Oak Park Heights correctional facility, the department alleged that Dudley attempted to obtain a refund of approximately \$20 by falsely reporting to the prison staff that he did not receive a canteen order. The department charged Dudley with attempting to violate Offender Discipline Regulation 190, which prohibits unauthorized control, theft, possession, transfer, or use of property.¹ The department advised Dudley that this charge carries a maximum penalty of 30 days' disciplinary loss of privileges, 10 days' restrictive disciplinary segregation, 90 days' disciplinary segregation, and 45 days' extended incarceration.

At a disciplinary hearing on September 27, Dudley "admit[ed] the charges with an explanation."² Because of Dudley's extensive history of disciplinary offenses and his

¹ Under the department's regulations, the penalties for an attempt and a completed violation are equivalent. *See* Minn. Dep't of Corrs., *Offender Discipline Regulations 17* (2005).

² Dudley asserts that he pleaded not guilty to the charges. But the hearing officer found that Dudley "admit[ted] the charges with an explanation." The record does not contain a transcript of the disciplinary hearing. Without a transcript, we will not disturb factual findings made below. *See In re Bender*, 671 N.W.2d 602, 605 (Minn. App. 2003) (stating that lack of transcript limits scope of appellate review to whether the district court's findings of fact support its conclusions of law). Moreover, the crux of this appeal is the *penalty* for the violation, not the finding of guilt.

prior convictions of theft and robbery, the hearing officer imposed a penalty of 10 days' disciplinary loss of privileges, 45 days' disciplinary segregation, and 10 days' extended incarceration. Dudley appealed the hearing officer's decision to the warden, who subsequently denied Dudley relief. Dudley petitioned the district court for a writ of habeas corpus. Concluding that Dudley's petition "has no arguable basis in law or in fact," the district court dismissed Dudley's petition with prejudice. This appeal followed.

D E C I S I O N

Dudley argues that he is entitled to a writ of habeas corpus because the department extended his term of imprisonment in violation of his constitutional rights. A writ of habeas corpus is a statutory civil remedy available "to obtain relief from [unlawful] imprisonment or restraint." Minn. Stat. § 589.01 (2010). A writ of habeas corpus is not available to "persons committed or detained by virtue of the final judgment of a competent tribunal of civil or criminal jurisdiction[.]" *Id.* It is the petitioner's burden to demonstrate the illegality of the detention. *Case v. Pung*, 413 N.W.2d 261, 262 (Minn. App. 1987), *review denied* (Minn. Nov. 24, 1987).

On review, we give great weight to the district court's findings when considering a petition for a writ of habeas corpus; we will uphold those 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). Our review of questions of law, however, is *de novo*. *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

I.

Dudley challenges the department's decision as a violation of his constitutional right to due process. Both the United States Constitution and the Minnesota Constitution compel due process of law before the state may deprive a person of life, liberty, or property. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. Our due-process analysis involves a two-step inquiry. *Carrillo v. Fabian*, 701 N.W.2d 763, 768 (Minn. 2005). First, we “determine whether the complainant has a liberty or property interest with which the state has interfered.” *Id.* If we find a deprivation of such an interest, we determine whether the procedures attendant to that deprivation were constitutionally sufficient. *Id.* When a disciplinary action against an inmate causes an immediate extension of the inmate's period of imprisonment, the inmate has a protected liberty interest that triggers a right to procedural due process before the inmate's supervised release date can be extended. *Id.* at 773.

Here, as an immediate consequence of the disciplinary action, the hearing officer extended Dudley's term of imprisonment by 10 days. Thus, Dudley has established a protected liberty interest, and the first prong of the due-process inquiry is satisfied. *See id.* To obtain relief, Dudley also must establish that the department's procedures were constitutionally insufficient. *See id.* at 768.

Dudley alleges that the department improperly aggravated his penalty. Under the department's regulations, an aggravated penalty is “double the existing segregation or [extended incarceration] penalty.” Minn. Dep't of Corr., *Offender Discipline Regulations* 17 (2005). As part of Dudley's penalty, the department imposed 45 days' disciplinary

segregation and 10 days' extended incarceration. Because the maximum penalty for a violation of Regulation 190 includes 90 days' disciplinary segregation and 45 days' extended incarceration, the penalty at issue is below the maximum penalty and does not constitute an aggravated penalty. *See id.* at 8, 17. Thus, Dudley's argument is without merit, and he is not entitled to relief on this ground.

Dudley also alleges that the department's regulations are outdated and inconsistent with current department policies. But Dudley provides no support for this allegation. Moreover, Dudley asserts that under the department's current policies, an inmate can receive only one day of extended incarceration for every three days of disciplinary segregation. Because Dudley received 45 days of disciplinary segregation, the department's policies, as asserted by Dudley, would permit the hearing officer to impose 15 days of extended incarceration. The hearing officer imposed only 10 days of extended incarceration. Under these circumstances, Dudley's argument fails.

Dudley next asserts that, when determining Dudley's guilt, the hearing officer erroneously considered Dudley's prior convictions of theft and robbery. In support of his argument, Dudley cites both the Federal Rules of Evidence and the Minnesota Rules of Evidence. But a department disciplinary hearing is not governed by these rules. *See Fed. R. Evid. 101(a)* (stating that the rules "apply to proceedings in United States courts"); *Minn. R. Evid. 101* (stating that the rules "govern proceedings in the courts of this state"); *Minn. Dep't of Corr., Policy 303.010 (2005)* (defining a disciplinary hearing, major or minor, as "an informal, administrative, fact finding examination" and evidence as "any item or information that would assist in resolving whether an offender has

violated an offender discipline regulation”). Moreover, Dudley admitted the charge. The hearing officer did not consider Dudley’s prior convictions when determining Dudley’s guilt. The convictions were considered only when determining Dudley’s penalty. Dudley’s argument, therefore, is without merit, and Dudley is not entitled to relief on this ground.

II.

Dudley contends that the department violated his Fourteenth Amendment right to equal protection of the law. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides, in relevant part: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. The constitutional guarantee of equal protection of the laws mandates that the state treat all similarly situated persons alike. *State v. Behl*, 564 N.W.2d 560, 568 (Minn. 1997). An essential element of any equal-protection claim is that the person claiming disparate treatment must be similarly situated to those to whom the person is compared. *St. Cloud Police Relief Ass’n v. City of St. Cloud*, 555 N.W.2d 318, 320 (Minn. App. 1996), *review denied* (Minn. Jan. 7, 1997).

Dudley maintains that he was treated differently from other inmates who have violated Regulation 190. He asserts that when, as here, an inmate first violates Regulation 190, the department typically imposes a penalty of 10 or 15 days of disciplinary segregation. Dudley acknowledges that subsequent violations receive increasingly severe penalties, but he contends that a violation of Regulation 190 is never punished with extended incarceration or a combination of disciplinary segregation and a

disciplinary loss of privileges. Dudley also argues that his penalty is more severe than the penalties imposed on inmates who have stolen “hundreds of dollars.” But Dudley does not identify any particular inmates who have been penalized for a violation of Regulation 190, and Dudley’s general assertions fail to establish that he is similarly situated to the inmates to whom he compares himself. Because there is no evidence that supports Dudley’s claim of unequal treatment, the district court correctly concluded that Dudley failed to establish an equal-protection violation.

Accordingly, Dudley is not entitled to habeas corpus relief.

Affirmed.