STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0615

Stephen Danforth, petitioner,
Appellant,

vs.

Tom Roy,
Commissioner of Corrections of the State of Minnesota,
Respondent.

Filed October 15, 2012
Affirmed
Schellhas, Judge

Rice County District Court
File No. 66-CV-11-3503

Stephen Danforth, Faribault, 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 respondent)

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

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

SCHELLHAS, Judge

Appellant challenges the district court's denial of his petition for a writ of habeas corpus, arguing that the Minnesota Department of Corrections violated his constitutional rights when it extended his incarceration by 360 days as a disciplinary penalty. We affirm.

FACTS

A jury found appellant Stephen Danforth guilty of first-degree criminal sexual conduct, and, on May 13, 1996, the district court sentenced him to 216 months' imprisonment. On August 4, 1998, after remand from this court in *State v. Danforth*, 573 N.W.2d 369, 378 (Minn. App. 1997), *review denied* (Minn. Dec. 16, 1997), the district court resentenced Danforth to 316 months' imprisonment with a release date of April 4, 2014, and a ten-year supervised-release term. In 2001, the Minnesota Department of Corrections (DOC) program-review team directed Danforth to complete a sex-offender assessment and to follow all recommendations. The DOC presented Danforth with a sex-offender-treatment agreement for the Minnesota Sex Offender Program (MSOP), but Danforth refused to sign it. In June 2005, the DOC again gave Danforth a sex-offender-treatment agreement for MSOP and explained the consequences of Danforth's refusal to sign. Danforth again refused to sign the sex-offender-treatment agreement. The DOC then charged Danforth with refusing to participate in sex-offender treatment in violation of DOC Inmate Discipline Regulations Rule 510, which authorizes sanctions for inmates who refuse to participate in mandated treatment.

On December 13, 2005, respondent Commissioner of the Department of Corrections conducted a hearing. At the hearing, Danforth acknowledged that the DOC had ordered him to participate in sex-offender treatment; he admitted that he met the criteria for treatment; and he told the hearing officer that he would never participate in sex-offender treatment. The hearing officer concluded that Danforth violated DOC Inmate Discipline Regulations Rule 510, and assigned Danforth the maximum penalty of 360 days of extended incarceration (EI). Danforth appealed the sanction of 360 days' EI, and the DOC denied his appeal.

Danforth petitioned the district court for a writ of habeas corpus, seeking vacation of the 360 days' EI, arguing that the EI violated the United States and Minnesota Constitutions' prohibitions against ex post facto laws. The court denied the petition, determining that an evidentiary hearing was unnecessary because Danforth raised no disputed factual issues in his petition and concluding that the DOC had authority to discipline an offender for failure to comply with a mandatory rehabilitative program. Danforth moved for reconsideration and requested an evidentiary hearing and the issuance of subpoena duces tecum. The court affirmed its order and denied as moot Danforth's motion for an evidentiary hearing and subpoena duces tecum.

This appeal follows.

D E C I S I O N

Danforth petitioned the district court for a writ of habeas corpus. A writ of habeas corpus is a statutory civil remedy available "to obtain relief from 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*. The petitioner bears the 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 trial court's findings in considering a petition for a writ of habeas corpus and will uphold the 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). But we review questions of law de novo. *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

Claim of Ex Post Facto Violation

The United States and Minnesota Constitutions prohibit ex post facto laws. U.S. Const., art. I, §§ 9–10; Minn. Const. art. I, § 11. The purpose of the prohibition is to ensure that legislative acts "give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed." *Weaver v. Graham*, 450 U.S. 24, 28–29, 101 S. Ct. 960, 964 (1981). "To fall within the *ex post facto* prohibition, a law must be [(1)] retrospective—that is, 'it must apply to events occurring before its enactment'—and [(2)] it 'must disadvantage the offender affected by it.'" *Lynce v. Mathis*, 519 U.S. 433, 441, 117 S. Ct. 891, 896 (1997) (quoting *Weaver*, 450 U.S. at 29, 101 S. Ct. at 964)).

Danforth argues that the DOC's sanction of 360 days' EI for his refusal to participate in a mandatory rehabilitative program violates the federal and state constitutional prohibitions against ex post facto laws. To the extent that we correctly understand Danforth's argument, he argues that the statutory language provides that at

the time of his sentencing in 1996, the DOC did not have the statutory authority to assign EI as a sanction and therefore that the imposition of EI constitutes a retroactive application of a statute in violation of the constitutional prohibition against ex post facto laws.

Danforth first seems to argue that at the time of his original sentencing in 1996, the DOC did not have statutory authority to assign EI as a disciplinary sanction. He argues that the legislature did not authorize the sanction of EI until it amended Minnesota Statutes section 244.03 in 1999 to incorporate the term "disciplinary sanction," and that before the statutory amendment, the DOC had authority only to assign disciplinary confinement time added (DCTA) as a sanction, which Danforth claims is a less-harsh sanction than EI. Danforth's argument is unpersuasive.

In 1992, the legislature amended Minn. Stat. §§ 244.03 and 244.05 (1992) to authorize the DOC to sanction inmates for refusal to participate in rehabilitative programs. 1992 Minn. Laws ch. 571, art. 2, §§ 2, 5–6, at 2004–06. On May 13, 1996, when the district court first sentenced Danforth, Minnesota Statutes section 244.03 (1994) provided that the DOC "shall provide appropriate mental health programs and vocational and educational programs . . . for inmates who are required to participate in the programs under the disciplinary offense rules adopted by the commissioner under section 244.05, subdivision 1b." Minnesota Statutes section 244.05, subdivision 1b(a) (1994), provided:

> [E]very inmate sentenced to prison for a felony offense committed on or after August 1, 1993, shall serve a supervised release term upon completion of the inmate's term

> of imprisonment and *any disciplinary confinement period imposed by the commissioner due to the inmate's violation of any disciplinary offense rule* adopted by the commissioner under paragraph b.

(Emphasis added.) Included among the disciplinary-offense rules that the legislature empowered the commissioner to adopt were rules that sanctioned "violation of institution rules, refusal to work, *refusal to participate in treatment* or other rehabilitative programs, and other matters to be determined by the commissioner." *Id.*, subd. 1b(b) (1994) (emphasis added). Section 244.05, subdivision 1b(a), neither defined "disciplinary confinement" nor included the terms DCTA or EI. But nothing in the statutory language can be construed as a limitation on the DOC's authority to adopt disciplinary-offense rules. To the contrary, the language in section 244.05, subdivisions 1b(a)–(b), indicates that the DOC has broad authority to create and enforce disciplinary-offense rules, including a range of sanctions applicable to particular inmate violations, such as rules that authorize assignment of DCTA or EI. *See State ex rel. Griep v. Skon*, 568 N.W.2d 453, 456 (Minn. App. 1997) (interpreting Minn. Stat. § 244.05, subd. 1b(b), as providing the DOC with "broad authority to promulgate disciplinary offense rules"); Minn. Dep't of Corr., *Offender Discipline Regulations* 40 (1999) (sanctioning refusal to participate in mandated treatment with up to 360 days' EI); Minn. Dep't of Corr., *Inmate Discipline Regulations* 34 (1996) (sanctioning refusal to participate in mandated treatment with up to 360 days' DCTA).

When interpreting unambiguous statutes, this court applies the plain meaning of the statutory language. *State by Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn.

1996). When undefined, "words and phrases are construed according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08 (2010). *Black's Law Dictionary* defines "incarceration" as "[t]he act or process of confining someone." *Black's Law Dictionary* 775 (8th ed. 2004). The *American Heritage Dictionary* defines "incarcerate" as "1. [t]o put in jail. 2. [t]o shut in; confine." *American Heritage Dictionary* 664 (New College ed. 1999). We believe it is unlikely that the legislature was unaware that confinement and incarceration are synonymous and that by authorizing the commissioner to assign the sanction of disciplinary confinement it would necessarily be authorizing the commissioner to assign a sanction of extended incarceration. Therefore, the plain language of sections 244.03 and 244.05 establishes that at the time of Danforth's sentencing, the commissioner could assign EI.

We conclude that both at the time of Danforth's sentencing on May 13, 1996, and his resentencing on August 4, 1998, the DOC had statutory authority to discipline him for his refusal to participate in mandated sex-offender treatment and that its authorized range of discipline was not limited to the imposition of DCTA and did not exclude the imposition of EI.

Danforth also argues that the inmate-discipline regulations in effect at the time of his sentencing show that the DOC did not have the authority to assign EI as a sanction because they provide that inmates could be sanctioned with DCTA, not EI, for refusal to participate in mandated rehabilitative programs. *Compare* Minn. Dep't of Corr., *Offender Discipline Regulations* 40 (1999) (sanctioning refusal to participate in mandated treatment with up to 360 days' EI), *with* Minn. Dep't of Corr., *Inmate Discipline*

Regulations 34 (1996) (sanctioning refusal to participate in mandated treatment with up to 360 days' DCTA). Danforth points out that the term "extended incarceration" was not added to the regulations until 1999, and, to support his argument, he cites *Rud v. Fabian*, 743 N.W.2d 295 (Minn. App. 2007), *review denied* (Minn. Mar. 26, 2008), and *Heggem v. Roy*, No. A11-1478, 2012 WL 1470231 (Minn. App. Apr. 30, 2012). Danforth's arguments are unpersuasive.

The district court sentenced Rud to prison in 1985, and the DOC sanctioned him in 2003 for his refusal to participate in a mandatory rehabilitative sex-offender program. *Rud*, 743 N.W.2d at 296–97. This court affirmed the district court's conclusion that the DOC's sanction violated the ex post facto prohibition, concluding that at the time of Rud's sentencing in 1985, the DOC lacked authority to create and enforce mandatory rehabilitative programs. *Id.* at 297, 300–01. But because the *Rud* court based its decision on the DOC's authority to sanction inmates in 1985, not 1996 or 1998, the case does not support Danforth's argument that the DOC lacked authority to impose EI as a sanction in 1996 or 1998. The *Rud* court applied law that predated the legislature's 1992 amendments to sections 244.03 and 244.05, which explicitly authorized the DOC to create and enforce participation in mandatory rehabilitative programs. *Id*. at 300.

In the unpublished and nonprecedential *Heggem* case, this court, in dicta, stated that *Rud* stood for the proposition that before 1999 "the commissioner did not have statutory authority to extend . . . [the] length of imprisonment for refus[al] to participate in rehabilitative programming." *Heggem*, 2012 WL 1470231, at *4. In light of the amendments to sections 244.03 and 244.05 in 1992, the *Heggem* court's statement about

Rud was not correct. Because Rud was sentenced in 1985, the *Rud* court had no reason to consider the 1992 statutory amendments because the legislature specifically provided they were applicable to crimes committed on or after August 1, 1993. *Rud*, 743 N.W.2d at 300. Moreover, contrary to Danforth's argument, the *Rud* court stated that the legislature's 1992 amendments were "consistent with granting the commissioner authority to impose a disciplinary confinement period for refusal to participate in treatment or other rehabilitative programs." *Id*. at 299. Here, both at the time that the district court sentenced Danforth in 1996 and at the time that it resentenced him in 1998, the law authorized the DOC to sanction inmates for refusal to participate in mandatory rehabilitative programs. *See* Minn. Stat. §§ 244.03, .05, subd. 1b (1994) (authorizing the commissioner to assign a disciplinary confinement period to inmates who refuse to participate in treatment or rehabilitative programs); Minn. Stat. §§ 244.03, .05 subd. 1b (1998) (same).

At the time of Danforth's sentencing and resentencing, sections 244.03 and 244.05, subdivision 1b, provided the DOC with broad authority to create and enforce participation in mandatory rehabilitative programs and to modify the sanctions for refusal to participate as the DOC deemed necessary. *See* Minn. Stat. § 244.05 subd. 1b(b) (providing that commissioner may adopt rules penalizing "violation of institution rules, refusal to work, refusal to participate in treatment or other rehabilitative programs, *and other matters determined by the commissioner*" (emphasis added)); *Skon*, 568 N.W.2d at 456 (interpreting Minn. Stat. § 244.05, subd. 1b(b), as providing DOC with "broad authority to promulgate disciplinary offense rules"). We conclude that nothing in the

statutory language suggests that the legislature's use of the term "disciplinary confinement period" in section 244.05, subdivision 1b, was intended to mean something different from "extended incarceration" provided for in Minn. Dep't of Corr., *Offender Discipline Regulations* 40 (1999). And Danforth provides this court with no authority upon which to base a different conclusion.

Because the DOC had broad authority to promulgate sanctions for refusal to participate in mandatory rehabilitative programs at the time of Danforth's sentencing and resentencing, Danforth had "fair warning," *Weaver* 450 U.S. at 28–29, 101 S. Ct. at 964, that he could be disciplined for his refusal to participate in mandatory rehabilitative programs and that such discipline could include incarceration beyond his supervised-release date. The DOC's application of the inmate-discipline regulation allowing EI did not constitute a retroactive application of a sanction that was not legislatively authorized in 1996 or 1998, and its application therefore did not violate the federal and state constitutional prohibitions against ex post facto laws. *See Lynce*, 519 U.S. at 441, 117 S. Ct. at 896 (holding that to violate the prohibition of ex post facto laws the law must be retroactive).

Danforth also appears to argue that the DOC's modification of its inmate-discipline regulations, whether or not supported by statutory authority at the time of his sentencing, was sufficient to violate the prohibition against ex post facto laws. To the extent that we understand Danforth's argument, he did not sufficiently or understandably raise it to the district court and the district court did not address it. Generally, this court does not consider issues raised for the first time on appeal. *Roby v. State*, 547 N.W.2d

354, 357 (Minn. 1996). When issues are not briefed or decided by the district court, we may hear them so long as they are constitutional issues and the "interests of justice require their consideration and addressing them would not work an unfair surprise on a party." *State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989). Here, we conclude that the interests of justice do not require that we address this issue.

Evidentiary Hearing

Danforth argues that the district court erred by denying his request for an evidentiary hearing. He argues that an evidentiary hearing regarding the DOC's disciplinary policies would enable him to show that the DOC did not impose EI prior to 1999, when the legislature amended Minn. Stat. § 244.03 (1999). *See* 1999 Minn. Laws ch. 126, § 8 at 521–22 (amending section 244.03); 1999 Minn. Laws ch. 208, § 1, at 1217 (amending section 244.03). Petitioners are entitled to evidentiary hearings "only if a factual dispute is shown by the petition." *Seifert v. Erickson*, 420 N.W.2d 917, 920 (Minn. App. 1988) (citing *State ex rel. Rankin v. Tahash*, 276 Minn. 97, 100–01, 149 N.W.2d 12, 15 (1967)), *review denied* (Minn. May 18, 1998). But Danforth's petition and subsequent filings turn on an issue of law—whether, at the time of Danforth's initial sentencing in 1996, the DOC had authority to assign EI to inmates who refused to participate in mandatory rehabilitative programs. We conclude that the district court did not err by denying Danforth's request for an evidentiary hearing.

Due Process

Danforth argues that the DOC's assignment of EI as a disciplinary sanction deprived him of due process. But Danforth insufficiently briefed this issue to the district

court, and the district court did not address it. We therefore decline to address this issue on appeal. *See Roby*, 547 N.W.2d at 357 (stating that appellate courts "generally will not decide issues which were not raised before the district court").

Request for Modification of EI Sanction

Danforth also argues that if we affirm the district court, we nevertheless should decrease the sanction imposed because the DOC improperly calculated it, allegedly resulting in a greater sanction than allowed by law. Danforth provides no legal support for this argument and did not present it to the district court, and we therefore decline to consider it. *See Roby*, 547 N.W.2d at 357 (stating that appellate courts "generally will not decide issues which were not raised before the district court").

Because the DOC did not violate the ex post facto prohibitions in the federal or state constitutions, we conclude that the district court did not err by denying Danforth's petition for writ of habeas corpus. Because Danforth's petition fails to show a factual dispute, we conclude that the district court did not err by denying his request for an evidentiary hearing.

Affirmed.