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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1175**

Andy Tillotson,
Relator,

vs.

Minnesota Department of Corrections,
Respondent.

**Filed April 29, 2013
Affirmed
Bjorkman, Judge**

Minnesota Department of Corrections

David W. Merchant, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Considered and decided by Stauber, Presiding Judge; Connolly, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Relator challenges the revocation of his conditional release. Relator argues that (1) his statutory right to a supervised-release term precludes revocation of his conditional release during his supervised-release term; and (2) he was only subject to conditions of

supervised release, and his violation of those conditions does not support revocation of his conditional release. We affirm.

FACTS

Relator Andy Tillotson was convicted of first-degree driving while impaired (DWI) on February 22, 2008. The district court imposed a 46-month executed sentence, with a five-year conditional-release term pursuant to Minn. Stat. § 169A.276 (2006). On June 25, 2009, the Minnesota Department of Corrections (department) released Tillotson from prison on work-release status. The department imposed special and standard conditions of release, including a requirement that Tillotson maintain contact with his agent and keep his agent informed of his activities. The department provided Tillotson a document detailing the conditions of release, as well as his anticipated supervised-release date, supervised-release expiration date, and conditional-release expiration date.

Tillotson began his supervised-release and conditional-release terms on December 28. The department imposed new special conditions of release and reiterated the same standard conditions, including the contact requirement. The department once again provided Tillotson a document detailing those conditions. The document also noted Tillotson's supervised-release status and his conditional-release expiration date.

Tillotson violated the contact requirement, and the department issued a warrant for his arrest on January 19, 2011. Tillotson was arrested on April 30, 2012, and the department revised his supervised-release and conditional-release expiration dates to account for his 467-day absence. Tillotson's agent filed a violation report, recommending that Tillotson "be revoked for and returned for 730 days." Tillotson

admitted that he violated the contact requirement but argued that he has a right to supervised release that precludes revocation of his conditional release while he is on supervised release. In the alternative, Tillotson argued that a 730-day sanction is excessive. After a hearing, a department hearings-and-release-unit (HRU) officer revoked Tillotson's conditional release and ordered him to serve 467 days in prison. Tillotson requested review, and an HRU executive officer affirmed the revocation of Tillotson's conditional release and the 467-day sanction. This certiorari appeal follows.

D E C I S I O N

Administrative-agency decisions “enjoy a presumption of correctness.” *In re Revocation of Family Child Care License of Burke*, 666 N.W.2d 724, 726 (Minn. App. 2003). We will reverse an administrative-agency decision only when it is arbitrary and capricious, exceeds the agency's jurisdiction or statutory authority, is made upon unlawful procedure, reflects an error of law, or is unsupported by substantial evidence in view of the entire record. Minn. Stat. § 14.69 (2012). We defer to the agency's factual findings, but we review de novo “the interpretation of statutes and their application to undisputed facts.” *Mattice v. Minn. Prop. Ins. Placement*, 655 N.W.2d 336, 340 (Minn. App. 2002), *review denied* (Minn. Mar. 18, 2003). In interpreting a statute, we look to its plain language, taking into account the statute's structure and context. *In re Robledo*, 611 N.W.2d 67, 69 (Minn. App. 2000); *see also* Minn. Stat. § 645.08(1) (2012).

At issue here is the interplay between two statutes governing release from prison. The first, Minn. Stat. § 169A.276, requires an offender convicted of first-degree DWI to be subject to a five-year conditional-release term, which begins when the offender is

“released from prison.” Minn. Stat. § 169A.276, subd. 1(d). The statute authorizes the department to “impose any conditions of release that the [department] deems appropriate.” *Id.* And if the offender “fails to comply with any condition of release,” the department may revoke the offender’s conditional release and order the offender to serve all or part of the remaining portion of the conditional-release term in prison. *Id.*

The second release statute, Minn. Stat. § 244.05, subd. 1b(a) (2006), applies to all offenders and calls for a supervised-release term as part of the pronounced sentence. The sanction for violating a supervised-released condition “is limited to serving the remaining time on the sentence imposed (a maximum of one-third of the sentence imposed).” *State ex rel. Peterson v. Fabian*, 784 N.W.2d 843, 845 (Minn. App. 2010).

Because both supervised release under Minn. Stat. § 244.05, subd. 1b, and conditional release under Minn. Stat. § 169A.276 commence upon an offender’s release from prison, a DWI offender serving conditional release generally will spend a portion of that conditional release on concurrent supervised release.

Tillotson argues that the department lacks authority to revoke his conditional release because (1) his statutory right to supervised release precludes revocation of his conditional release during his supervised-release term and (2) he did not violate his conditional release because the contact requirement was only a condition of his supervised release. We address each argument in turn.

I. The fact that Tillotson was on concurrent supervised release does not preclude the department from revoking his conditional release.

Tillotson argues that his right to supervised release under Minn. Stat. § 244.05 limits the sanction for violating release conditions during the period of concurrent supervised and conditional release to serving the time remaining on the sentence imposed. He points to the language in Minn. Stat. § 169A.276, subd. 1(d), that, “[e]xcept as otherwise provided in this section, conditional release is governed by provisions relating to supervised release,” contending that an offender is subject only to conditions and potential sanctions for supervised release while on supervised release and thereafter subject only to conditions and potential sanctions for conditional release. According to Tillotson, the department lacks authority to revoke conditional release during his concurrent supervised-release term. We are not persuaded.

The language in Minn. Stat. § 169A.276 incorporating supervised-release provisions does not grant supervised release precedence over conditional release. Rather, it recognizes that there are procedural issues relating to conditional release not addressed in Minn. Stat. § 169A.276. *Compare* Minn. Stat. § 244.05 (2006) (providing specific requirements as to the administration of supervised release and expressly authorizing the commissioner to create rules for conditional release and supervised release), *with* Minn. Stat. § 169A.276, subd. 1(d) (requiring conditional-release term as part of mandatory prison sentence but incorporating supervised-release “provisions” rather than detailing administrative requirements). And the language in Minn. Stat. § 169A.276, subd. 1(e), referring in the disjunctive to “persons placed on supervised or conditional release” does

not grant a right to supervised release distinct from conditional release but recognizes that there will be a period of time when a DWI offender is not serving both types of release—while on conditional release after expiration of the sentence. Moreover, Tillotson’s interpretation effectively makes his conditional-release term consecutive to his supervised-release term. While the legislature has established consecutive release terms in other contexts, it plainly elected not to do so in Minn. Stat. § 169A.276. *See Peterson*, 784 N.W.2d at 847 (department erred by imposing sanction beyond the time remaining in sex offender’s sentence when statute establishes that conditional-release term is consecutive to supervised-release term).

Because nothing in Minn. Stat. § 244.05 or Minn. Stat. § 169A.276 precludes revocation of a DWI offender’s conditional release during the concurrent supervised-release term, we conclude that the department was authorized to revoke Tillotson’s conditional release while he was serving concurrent supervised release.

II. Tillotson violated a release condition applicable to his conditional release.

Tillotson contends that the contact requirement he violated was a condition of his supervised release, not his conditional release, because (1) the department must impose separate conditions of release for supervised release and conditional release but imposed only one set of conditions here, and (2) department records indicate only that Tillotson was on supervised release, so the conditions apply only to his supervised release.

A. Separate conditions of release

Tillotson argues that Minn. Stat. § 169A.276 requires the department to impose separate conditions of release for supervised release and conditional release. He points to

the requirement that the department impose “any conditions of release that the [department] deems appropriate,” urging that this language mandates the imposition of release conditions specific to conditional release and separate from supervised-release conditions. We are not persuaded. The statute requires only that the department impose conditions applicable to conditional release; it does not require that the conditions be imposed at any particular time or in any particular manner. Nor does it mandate that those conditions be different from supervised-release conditions, or imposed separately. As a practical matter, it would be unreasonable to interpret Minn. Stat. § 169A.276 to require the department, the supervising authority for both the concurrent release terms, to impose two separate sets of likely identical conditions. *See Peterson*, 784 N.W.2d at 847 (recognizing that “the conditions of supervised release and conditional release may be similar or identical,” even when not concurrent). We decline to read this procedural requirement into the statute.

Tillotson also argues that *Peterson* requires separate conditions for supervised release and conditional release. We disagree. In *Peterson*, the sex offender’s conditional-release term was consecutive to, not concurrent with, his supervised-release term, so he was not on conditional release when he violated a condition of his release. *Id.* at 846. Because he was not on conditional release, he could not be subject to sanctions commensurate with a conditional-release violation. *Id.* at 847. *Peterson* therefore precludes prospective revocation of conditional release based on a violation of current release conditions. *Peterson* does not preclude revocation of conditional release when, as here, the offender was on conditional release at the time of the violation.

B. Department records

Tillotson further argues that because documents he received from the department identify his status only as being on supervised release, the release conditions indicated therein do not apply to his conditional release. We disagree. While the documents list Tillotson's status as supervised release, they also refer broadly to conditions of release and consistently recognize Tillotson's dual status by listing Tillotson's conditional-release expiration date. Moreover, Tillotson was aware that he was on conditional release and subject to release conditions; the absence of a more direct reference to Tillotson's conditional release in the documents detailing his release conditions does not alter his status or limit the applicability of those conditions.

In sum, Tillotson was on conditional release during the relevant time frame, was subject to various release conditions, and violated one of those conditions. Because these undisputed facts establish the statutory prerequisite to revocation of his conditional release, we conclude that the department did not exceed its statutory authority by revoking Tillotson's conditional release.

Affirmed.