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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2155**

Marvin Orlando Johnson, petitioner,
Appellant,

vs.

Tom Roy,
Commissioner of Corrections,
Respondent.

**Filed July 8, 2013
Affirmed
Johnson, Chief Judge**

Washington County District Court
File No. 82-CV-11-7142

Marvin Orlando Johnson, Stillwater, Minnesota (pro se appellant)

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

Considered and decided by Cleary, Presiding Judge; Johnson, Chief Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

JOHNSON, Chief Judge

Marvin Orlando Johnson is a prisoner in the custody of the commissioner of
corrections. In prison disciplinary proceedings, a hearing officer determined that Johnson

violated prison regulations by attempting to smuggle drugs into the prison. The hearing officer disciplined Johnson by placing him in disciplinary segregation and extending his supervised release date. Johnson filed a petition for a writ of habeas corpus in which he alleged that the prison disciplinary proceedings violated his right to due process of law. The district court denied the petition. We affirm.

FACTS

In June 2005, Johnson pleaded guilty in Hennepin County to two counts of first-degree aggravated robbery. He was sentenced to 128 months of imprisonment. *See Johnson v. State*, 733 N.W.2d 834 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007).

In June 2011, while incarcerated at the Minnesota Correctional Facility in Stillwater, Johnson received a notice of violation alleging that he had attempted to smuggle drugs into the prison. A hearing officer held a disciplinary hearing and subsequently issued a written report of the hearing. The hearing officer's report indicates that Johnson was informed of his due process rights. The report states that Johnson "initially requested a continuance to provide a defense but subsequently withdrew the request." The report also describes the evidence that was received at the hearing. Specifically, an investigator from the Office of Special Investigations testified that an anonymous tip was received that Johnson was in possession of marijuana and cocaine, that investigators listened to telephone conversations between Johnson and his girlfriend in which he arranged for her to smuggle drugs into prison, that investigators recognized Johnson's voice on the telephone calls even though he used other offenders' PIN codes to

place the calls, and that Johnson's girlfriend and another person were found to be in possession of cocaine while visiting the prison. Johnson denied the allegations and introduced the testimony of his cellmate, who claimed responsibility for imitating Johnson on the telephone and attempting to smuggle drugs into the prison.

The hearing officer found that the investigator was credible and that Johnson and his cellmate were not credible. The hearing officer found that Johnson had committed four violations of prison regulations: two violations for attempted conspiracy to smuggle drugs, one violation for attempted possession of drugs, and one violation for disorderly conduct. The hearing officer imposed a penalty of 140 days of extended incarceration and 420 days of disciplinary segregation. Johnson filed an administrative appeal of the hearing officer's decision, which the warden denied.

Johnson asserts that, before the disciplinary hearing, his supervised release date was set for October 24, 2011. He further asserts that the imposition of 140 days of extended incarceration postponed his supervised release date to approximately March 9, 2012. The imposition of 420 days of disciplinary segregation, however, postponed Johnson's supervised release further, by another 154 days, to August 13, 2012. Prison officials established August 13, 2012, as the new supervised release date pursuant to a statute that prohibits the department of corrections from placing an inmate on supervised release until the inmate has completed a term of punitive segregation that was imposed for a violation of a prison disciplinary rule. *See* Minn. Stat. § 244.05, subd. 1b(b) (2010).

In December 2011, Johnson petitioned the district court in Washington County for a writ of habeas corpus. He alleged that the prison discipline process, including the

extension of his supervised release date by an additional 154 days of incarceration pursuant to section 244.05, subdivision 1b(b), violated his right to due process of law. The district court denied the petition. Johnson appeals.

D E C I S I O N

Johnson argues that the district court erred by denying his petition for a writ of habeas corpus.

The privilege of filing a writ of habeas corpus is guaranteed by the state constitution. Minn. Const. art. I, § 7. The legislature has fulfilled that guarantee by enacting a statute that provides for a habeas remedy. *See* Minn. Stat. §§ 589.01-.35 (2010). The relevant chapter begins by stating:

A person imprisoned or otherwise restrained of liberty, except persons committed or detained by virtue of the final judgment of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon the judgment, may apply for a writ of habeas corpus to obtain relief from imprisonment or restraint.

Minn. Stat. § 589.01. To obtain habeas relief, a petitioner “must allege either a lack of jurisdiction or a violation of a constitutional right.” *Beaulieu v. Minnesota Dep’t of Human Servs.*, 798 N.W.2d 542, 548 (Minn. App. 2011), *aff’d*, 825 N.W.2d 716 (Minn. 2013). The petitioner bears the burden of proving that his detention is unlawful. *State ex rel. Adams v. Rigg*, 252 Minn. 283, 285, 89 N.W.2d 898, 902 (1958); *Case v. Pung*, 413 N.W.2d 261, 262 (Minn. App. 1987), *review denied* (Minn. Nov. 24, 1987).

Johnson contends that he was deprived of his constitutional right to due process of law in the prison disciplinary proceedings, which resulted in the extension of his

supervised release date, which in turn has extended his incarceration. The Due Process Clause of the United States Constitution provides that a state shall not “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. To analyze a claim of a denial of due process, we ask two questions. The first is whether the plaintiff has a liberty or property interest that is allegedly being deprived. *Carrillo v. Fabian*, 701 N.W.2d 763, 768 (Minn. 2005). The second is “whether the procedures attendant upon that deprivation were constitutionally sufficient.” *Id.* The supreme court has decided that a person in Johnson’s position “has a protected liberty interest in his supervised release date that triggers a right to procedural due process before that date can be extended.” *Id.* at 773. Thus, the only question for this appeal is whether Johnson received the process to which he is due.

In a prison disciplinary proceeding, the Due Process Clause requires that a prisoner receive the benefit of the following procedures: (1) written notice of a violation at least 24 hours in advance of the hearing, (2) the right to present evidence and call witnesses, and (3) written findings from the hearing officer explaining the evidence and reasoning relied on in reaching the decision. *Wolff v. McDonnell*, 418 U.S. 539, 564-66, 94 S. Ct. 2963, 2978-79 (1974). Furthermore, a hearing officer must apply a preponderance-of-the-evidence standard when finding the relevant facts. *Carrillo*, 701 N.W.2d at 777.

In this case, Johnson received the process to which he is due. First, it is undisputed that he received a written notice of violation on June 16, 2011, which was 12 days before the hearing occurred. Second, Johnson was allowed to present evidence and

to call witnesses. In fact, he testified on his own behalf and called one witness, his cellmate. Third, the hearing officer issued written findings that explained the evidence on which he relied and the reasons for finding that Johnson had violated prison regulations, including his credibility determinations. The hearing officer also explained the factual basis of the extension of Johnson's supervised release date. Furthermore, the hearing officer applied the preponderance-of-the-evidence evidentiary standard. Thus, Johnson's disciplinary hearing was conducted in full compliance with the Due Process Clause of the United States Constitution, as interpreted by the United States Supreme Court and the Minnesota Supreme Court.

In sum, the district court did not err by denying Johnson's petition for a writ of habeas corpus.

Affirmed.