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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0315**

Michael Carlton Lowe, Sr.,
Appellant,

vs.

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

**Filed July 22, 2013
Affirmed
Chutich, Judge**

Chisago County District Court
File No. 13-CV-12-1094

Michael Carlton Lowe, Sr., Rush City, 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 Smith, Presiding Judge; Schellhas, Judge; and Chutich, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Appellant Michael Carlton Lowe, Sr., challenges the district court's denial of his petition for a writ of habeas corpus, arguing that a sentencing error renders his restraint illegal and that the district court should have granted him an evidentiary hearing on his petition. Because the district court did not err in concluding that Lowe's argument is an improper collateral attack on his conviction or in denying an evidentiary hearing, we affirm.

FACTS

Lowe was convicted in 2007 of first-degree criminal sexual conduct, third-degree assault, and terroristic threats. After the district court sentenced him to 360 months in prison, he appealed and this court affirmed the convictions. *State v. Lowe*, No. A07-2321, 2009 WL 437493 (Minn. App. Feb. 24, 2009), *review denied* (Minn. May 27, 2009). Lowe then unsuccessfully petitioned for a writ of habeas corpus three times. In denying Lowe's third petition, the district court concluded that no evidentiary hearing was warranted and that Lowe could not challenge his criminal conviction in a habeas proceeding. Lowe now appeals this denial.

DECISION

In reviewing a district court's denial of a petition for a writ of habeas corpus, we give the district court's factual findings great weight and we will sustain the findings if they are reasonably supported by the evidence. *Aziz v. Fabian*, 791 N.W.2d 567, 569

(Minn. App. 2010). We review questions of law de novo. *Id.*; *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

A writ of habeas corpus is a civil remedy that allows a prisoner to obtain relief from unlawful imprisonment or restraint. Minn. Stat. § 589.01 (2012). The writ may only be used “to raise claims involving fundamental constitutional rights and significant restraints on a defendant’s liberty or to challenge the conditions of confinement.” *Guth*, 716 N.W.2d at 26–27; *see also Beaulieu v. Minn. Dep’t of Human Servs.*, 798 N.W.2d 542, 546–48 (Minn. App. 2011) (stating that habeas relief is available only for alleged jurisdictional defects and constitutional violations), *aff’d*, 825 N.W.2d 716 (Minn. 2013).

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.” Minn. Stat. § 589.01. The writ may not be used as a substitute for direct appeal, to address issues previously raised, or to collaterally attack a judgment. *See Breeding v. Utecht*, 239 Minn. 137, 139–40, 59 N.W.2d 314, 316 (1953) (stating that a writ of habeas corpus “may not be used as a substitute for a writ of error or appeal or a motion to correct, amend, or vacate nor as a means to collaterally attack the judgment”); *Kelsey v. State*, 283 N.W.2d 892, 893–94 (Minn. 1979) (stating that when direct appeal and postconviction remedies are available to raise claims, a petitioner may not “use habeas corpus as a means of obtaining review of trial errors”). These rules also apply where a collateral attack is made on a sentence. *State ex rel. Holm v. Tahash*, 272 Minn. 466, 469, 139 N.W.2d 161, 163 (1965).

Lowe does not allege any jurisdictional defect; nor does he contend that his confinement violates his constitutional rights. Instead, Lowe argues that the district court pronounced a stayed sentence at the sentencing hearing, but actually imposed an executed sentence. This argument is an improper collateral attack on the underlying sentence and final judgment and cannot be remedied in a habeas corpus proceeding.

In any event, the record does not reflect that Lowe's arguments have substantive merit. At the sentencing hearing, the district court sentenced Lowe to 360 months in prison, stating that Lowe "will serve 240 months, [and] . . . will be on probation for a period of 120 months." It appears that the judge simply misspoke when he used the word "probation," and instead meant parole or supervised release. When a defendant is given an executed sentence, Minnesota law provides that he serve a term of imprisonment equal to two-thirds of the sentence and serve the remaining one-third of the sentence on supervised release. Minn. Stat. §§ 244.01, subd. 8, .05, subd. 1b (2012). The district court's sentence correctly reflects this statutory scheme, notwithstanding the reference to "probation." Further, the warrant of commitment reflects the executed 360-month sentence. Thus, even if we addressed Lowe's substantive argument, he would not be entitled to relief.

Evidentiary Hearing

When considering a habeas petition, the district court may "examine the official files and records of the court issuing the warrant of commitment" and may "take judicial notice of official records or transcripts to determine the sufficiency of the petition or the propriety of issuing the writ of habeas corpus." Minn. Stat. § 589.04(f) (2012). "[A]

habeas corpus hearing is not needed when the petitioner has not alleged sufficient facts to constitute a prima facie case for relief.” *Case v. Pung*, 413 N.W.2d 261, 263 (Minn. App. 1987), *review denied* (Minn. Nov. 24, 1987). Further, the district court need not hold an evidentiary hearing when the petitioner has not demonstrated a factual dispute. *Seifert v. Erickson*, 420 N.W.2d 917, 920 (Minn. App. 1988), *review denied* (Minn. May 18, 1988).

Lowe has not alleged sufficient facts to establish a prima facie case for relief. Further, the record contains the relevant transcript of his sentencing hearing and his warrant of commitment. Even if his argument could be considered in a habeas petition, no relevant facts concerning his sentence are in dispute and the district court properly dismissed the petition without an evidentiary hearing.

Affirmed.