STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1332

State of Minnesota,
Respondent,

vs.

Brian Keith Schnagl, a/k/a Brian Keith Schnagel,
Appellant.

Filed November 25, 2013
Affirmed
Stauber, Judge

Dakota County District Court
File No. 19K503000796

Lori A. Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Tricia A. Loehr, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Interim Chief Appellate Public Defender, Chelsie Willett, Assistant Appellate Public Defender, St. Paul, Minnesota (for appellant)

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

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

STAUBER, Judge

In this sentencing appeal under Minn. R. Crim. P. 27.03, subd. 9, appellant argues that the district court erred by denying his motion to correct his sentence because the

Department of Corrections (DOC) improperly extended his conditional-release term to account for the time appellant spent incarcerated for violations of his supervised release. Appellant argues that the DOC should have instead deducted his entire supervised-release term from his conditional-release term as required by Minn. Stat. § 609.109, subd. 7(a) (2000). The state disagrees, and also claims that the district court did not have jurisdiction over appellant's claim. We affirm.

FACTS

Appellant Brian Keith Schnagl was convicted of first-degree criminal sexual conduct in Dakota County and sentenced to 98 months in prison. The district court also imposed five years of conditional release as required by statute. On July 5, 2007, appellant was released from prison and placed on supervised release. Appellant was subsequently arrested on September 21, 2007, for failing to comply with chemical-dependency programming and failing to submit to random chemical testing. A hearing officer found appellant in violation of his supervised release, revoked his release status, and assigned appellant to 90-days of incarceration, with re-release contingent upon an agent approved plan.

On December 19, 2007, appellant was again released into the community. As required by the Bureau of Criminal Apprehension (BCA), appellant registered his address as the Recovery Resource Center (RRC) in Minneapolis. But on February 22, 2008, appellant left the RRC and failed to notify law enforcement of his current address. Consequently, a warrant was issued for his arrest.

Appellant was apprehended 202 days after the warrant was issued. The supervised-release board revoked appellant's supervised release for failing to complete residential programing, failing to maintain contact with his supervised-release agent, and failing to remain law abiding. The supervised-release board then assigned appellant to an additional 1,095 days in custody.

While he was on conditional release, appellant was informed that the expiration date of his conditional-release term had been extended from January 23, 2013, to January 26, 2015. Appellant then filed a motion in Dakota County District Court pursuant to Minn. R. Crim. P. 27.03, subd. 9, arguing that the expiration date of his conditional-release period had been illegally extended, and requesting an "order directing the [DOC] to subtract 32-months and 20-days of supervised release from his five-year conditional release" period. The state responded, arguing inter alia, that the district court did not have jurisdiction over the matter.

On April 22, 2013, the district court filed an order rejecting the state's claim that it did not have jurisdiction. But the district court also denied appellant's motion to "change, correct or otherwise modify [his] conditional release period calculation imposed by the [DOC]." The court reasoned that appellant "is entitled to credit against his conditional release time for time spent on supervised release while in the community complying with his supervised release conditions. He is not entitled to supervised release time that was spent incarcerated for violations or time spent on warrant status." This appeal followed.

D E C I S I O N

I.

The state argues that because appellant was detained in Anoka County, the district court in Dakota County did not have jurisdiction over appellant's motion.[1] Instead, the state argues that the "appropriate remedy for . . . appellant was to petition for a writ of habeas corpus."[2] We review issues of jurisdiction de novo. *State v. Davis*, 773 N.W.2d 66, 68 (Minn. 2009), *cert. denied*, 559 U.S. 1069 (2010).

A writ of habeas corpus is a statutory civil remedy available to obtain relief from unlawful imprisonment or restraint. Minn. Stat. § 589.01 (2012). To obtain habeas relief in district court, a petitioner must file a petition in the district court in the county in which he is detained. *See* Minn. Stat. § 589.02 (2012). But this court recently held that a petition for a writ of habeas corpus may be used to obtain relief only for constitutional violations or jurisdictional defects, not for violations of statutes or other sources of law. *Beaulieu v. Minn. Dep't of Human Servs.*, 798 N.W.2d 542, 548 (Minn. App. 2011), *aff'd*, 825 N.W.2d 716 (Minn. 2013).

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[1] The state does not specify the jurisdiction being challenged. But because subject-matter jurisdiction is the authority that a court has to act and rule on cases, *Black's Law Dictionary* 931 (9th ed. 2009), we presume that the state is challenging the district court's lack of subject-matter jurisdiction.

[2] Although the state did not file a motion for related appeal, the issue is properly before us because a subject-matter jurisdiction claim involves a court's power to hear a case and, therefore, the claim can never be forfeited or waived." *See Reed v. State*, 793 N.W.2d 725, 731 (Minn. 2010).

Here, appellant's argument is that the DOC improperly extended his five-year conditional-release term. Appellant's claim does not involve a constitutional or jurisdictional challenge. Therefore, habeas relief does not apply.

There is also nothing in the plain language of Minn. R. Crim. P. 27.03, subd. 9, indicating that the Dakota County District Court did not have jurisdiction over appellant's motion. The rule provides that "[t]he court may at any time correct a sentence not authorized by law. The court may modify a sentence during a stay of execution or imposition of sentence if the court does not increase the period of confinement." Minn. R. Crim. P. 27.03, subd. 9.

Appellant's motion challenged the legality of his sentence, which was originally imposed in Dakota County. Consequently, appellant's challenge falls squarely within the purview of rule 27.03, subdivision 9. Moreover, motions made under this rule are generally treated as postconviction petitions. *See Bonga v. State*, 765 N.W.2d 639, 642-43 (Minn. 2009); *see also Vazquez v. State*, 822 N.W.2d 313, 316-17 (Minn. App. 2012). And the postconviction relief statute provides a broad spectrum of relief, including sentencing issues. *See* Minn. Stat. § 590.01, subd. 1 (2012). Accordingly, the district court correctly concluded that it had jurisdiction over appellant's motion.

II.

Appellant challenges the DOC's calculation of the expiration date of his conditional release. This court reviews de novo the interpretation of a sentencing statute. *State v. Flemino*, 529 N.W.2d 501, 503 (Minn. App. 1995), *review denied* (Minn. May 31, 1995).

Appellant was convicted of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(A)(2) (2000). When an individual is convicted of a felony and receives an executed sentence, the "executed sentence consists of two parts: (1) a specified minimum term of imprisonment that is equal to two-thirds of the executed sentence; and (2) a specified maximum supervised release term that is equal to one-third of the executed sentence." Minn. Stat. § 244.101, subd. 1 (2000). And notwithstanding the statutory maximum sentence otherwise applicable to the offense of first-degree criminal sexual conduct, "when a court sentences a person to prison for a violation of section 609.342, . . . the court shall provide that after the person has completed the sentence imposed, the commissioner of corrections shall place the person on conditional release." Minn. Stat. § 609.109, subd. 7(a). An individual convicted for a violation of section 609.342 "shall be placed on conditional release for five years, minus the time the person served on supervised release." *Id.*

Appellant argues that his "conditional release and supervised release terms should run concurrent," and that under section 609.109, subdivision 7(a), he is "entitled to have the entire duration of his supervised-release term credited towards the duration of his conditional release period." Thus, appellant argues that the DOC improperly extended the date of his conditional release.

This court "has previously struggled with the difference between supervised release and conditional release." *State ex rel. Peterson v. Fabian*, 784 N.W.2d 843, 847 (Minn. App. 2010). In *State v. Enger*, the defendant challenged the district court's authority to sentence him to five years' conditional release, which was ordered to be

served after the defendant served his 57 months in prison and 29 months of supervised release. 539 N.W.2d 259, 263 (Minn. App. 1995), *review denied* (Minn. Dec. 20, 1995). This court concluded that because Minn. Stat. § 609.346, subd. 5(a), required an individual convicted of first-degree criminal sexual conduct to be placed on conditional release for five years minus the time the person served on supervised release, the defendant's "five year conditional release period must be reduced by the 29 month[] supervised release period." *Id.* at 264.

Several years later, in *State v. Koperski*, this court concluded that Minn. Stat. § 609.109, subd. 7(a), explicitly requires that "any supervised release time served be deducted from the conditional release period to be served." 611 N.W.2d 569, 571 (Minn. App. 2000). Thus, the court concluded that the DOC had imposed a conditional-release period that conflicted with the law because it would require the defendant to serve his supervised-release period and conditional-release period consecutively without deducting the amount of time the defendant served on supervised release from the time he was to serve on conditional release. *Id.* at 572-73.

Ten years after *Koperski* was decided, this court in *Peterson* considered the similarity between the conditional-release statute applicable to sex offenders, Minn. Stat. § 609.3455, subd. 6 (2008),[3] and the conditional-release statute applicable to predatory offenders who fail to register, Minn. Stat. § 243.166, subd. 5a (2008). 784 N.W.2d at

[3] In 2005, the legislature repealed section 609.109 and amended the conditional-release provisions applicable to sex offenders. 2005 Minn. Laws ch. 136, art. 2 §§ 21, 23, at 929-33 (repealing Minn. Stat. § 609.109, subd. 7, and enacting Minn. Stat. § 609.3455, applicable to crimes committed on or after August 1, 2005).

846. The court noted that unlike the statute applicable to sex offenders, the statute applicable to failure-to-register predatory offenders does not include the language: "minus the time the offender served on supervised release." *Id.* Nonetheless, the court concluded that "a conditional-release term for failure-to-register offenders under Minn. Stat. § 243.166, subd. 5a, is consecutive to a supervised-release term, but not because the statute lacks the language, 'minus the time the offender served on supervised release,' found in Minn. Stat. § 609.3455, subd. 6." *Id.* Rather, the court based its decision on the "clear language" of section 243.166, subdivision 5a, that provides that the individual shall be placed on conditional release "after the person has completed the sentence imposed." *Id.* (quoting Minn. Stat. § 243.166, subd. 5a). The court went on to hold that because the conditional-release and supervised-release terms under Minn. Stat. § 243.166, subd. 5a, are consecutive in nature, a defendant may not be sanctioned for a supervised-release violation by extending a defendant's imprisonment beyond the completion date of the sentence imposed. *Id.* at 847.

We conclude that under *Peterson*, appellant's conditional-release and supervised-release terms run consecutively. Although the *Peterson* decision focuses on the conditional-release term for failure-to-register offenders, the decision was premised on a direct comparison to the conditional-release statute applicable to sex offenders. Both statutes include the language that the offender shall be placed on conditional release "after" the individual has "completed the sentence imposed." *Compare* Minn. Stat. § 243.166, subd. 5a, *with* Minn. Stat. §§ 609.3455, subd. 6, and 609.109, subd. 7(a). And the *Peterson* court specifically stated that section 243.166, subd. 5a is consecutive "*but*

not because the statute lacks the language, 'minus the time the offender served on supervised release.'" *Peterson*, 784 N.W.2d at 846 (emphasis added). Nonetheless, although the conditional-release term applicable to sex offenders runs consecutively to the supervised-release term, *Enger* and *Koperski* both hold that the conditional-release statute applicable to sex offenders mandates that the amount of time the offender spends on supervised release must be deducted from the offender's conditional-release term. *See Koperski*, 611 N.W.2d at 571 (holding that Minn. Stat. § 609.109, subd. 7(a), requires that any supervised-release time served be deducted from the conditional-release period to be served); *see also Enger*, 539 N.W.2d at 264 (concluding that the defendant's five-year conditional-release term must be reduced by the amount of time the defendant served on supervised release). And *Peterson* does not disagree with this conclusion. *See Peterson*, 784 N.W.2d at 847 (recognizing that under *Enger*, the conditional-release period must be reduced by the supervised-release period, but concluding that "unlike in *Enger* and *Koperski*, the issue here is not whether [the defendant] is entitled to credit against his conditional-release term for time served on supervised release; the issue is the time at which the conditional-release term begins").

The state does not quibble with the general rule that under Minn. Stat. § 609.109, subd. 7(a), the time a sex offender spends on supervised release must be deducted from the offender's conditional-release term. But the state argues that "supervised release" constitutes the time an inmate served in the community under supervision and subject to prescribed rules. The state contends that time spent on warrant status and time spent in custody following violations while on supervised release, does not constitute "supervised

release" because the inmate is not serving time in the community under supervision and subject to prescribed rules. Thus, the state argues that appellant is not entitled to conditional-release credit "for the time he spent in custody on supervised release violations, and the 202 days he was on warrant status stopped the time running on his supervised release period."[4]

We agree. The Minnesota Rules define "[s]upervised release" as "that portion of a determinate sentence served by an inmate in the community under supervision and subject to prescribed rules, adopted in accordance with Minnesota Statutes, section 244.05." Minn. R. 2940.0100, subp. 31 (2001). Under this definition, an individual, like appellant, who spent time in custody on supervised-release violations, was not on "supervised release" during the time spent in custody because he was not "in the community under supervision." *See id.* This conclusion is supported by the logical interpretation of "supervised release," which, by the very nature of the term, indicates that the offender is not incarcerated. *See* Minn. Stat. § 645.08(1) (2012) (stating that words and phrases are given their plain and ordinary meaning when construing statutory language).

Moreover, the state's position is further supported by the statutory language discussing supervised-release terms. As addressed above, an executed sentence consists of a term of imprisonment and "a specified maximum supervised release term that is equal to one-third of the executed sentence. The amount of time the inmate actually

[4] Appellant conceded at oral argument that the 202 days he spent on warrant status does not constitute time spent on supervised release and, therefore, should not be credited toward his conditional release.

serves in prison and on supervised release is subject to the provisions of section 244.05, subdivision 1b." Minn. Stat. § 244.101, subd. 1. Section 244.05, subdivision 1b, provides:

> Except as provided in subdivisions 4 and 5, every 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 terms of imprisonment and any disciplinary confinement period imposed by the commissioner due to the inmate's violation of any disciplinary rule adopted by the commissioner or refusal to participate in a rehabilitative program under section 244.03. The amount of time the inmate serves on supervised release shall be equal in length to the amount of time remaining on the inmate's executed sentence after the inmate has served the term of imprisonment and any disciplinary confinement period imposed by the commissioner.

Minn. Stat. § 244.05, subd. 1b(a) (2000).

The language of section 244.05, subdivision 1b(a), indicates that supervised release is separate and distinct from not only the term of imprisonment, but also any other disciplinary confinement the offender has served due to a "violation of any disciplinary rule adopted by the commissioner." *See id.* In other words, if an offender is in confinement due to a violation of a disciplinary rule adopted by the commissioner, he is not on supervised release. And, pursuant to Minn. Stat. § 609.109, subd. 7(a), only the time the offender spent on supervised release is deducted from the offender's conditional-release period. Thus, we conclude that appellant is not entitled to credit against his conditional-release period for the time he spent incarcerated on violations of his supervised-release term.

We acknowledge that in *Koperski*, the defendant's supervised-release term was subtracted from his conditional-release term despite the fact that he was in prison on a separate conviction. 611 N.W.2d at 573. But *Koperski* was decided on unique facts that are separate and distinct from the facts before us here. Under the plain language of Minn. Stat. § 244.05, subd. 1b(a), and Minn. R. 2940.0100, subp. 31, appellant was not on supervised release when he was incarcerated for violations of his supervised release. The DOC considered the amount of time appellant spent incarcerated as a result of his supervised-release violations, as well as the time he spent on warrant status, and adjusted his conditional-release date accordingly. Therefore, the district court did not err by denying appellant's motion to correct his sentence.

Affirmed.