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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2260**

State of Minnesota,
Respondent,

vs.

Kiunte Jaishun McCoy,
Appellant.

**Filed May 5, 2014
Reversed and remanded
Klaphake, Judge***

Olmsted County District Court
File No. 55-K3-99-001758

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County
Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Shannon Callahan (certified
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Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and
Klaphake, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Kiunte Jaishun McCoy appeals the district court's denial of his motion for sentence correction, arguing that (1) the district court erred by determining that he was required to petition for habeas corpus relief, and (2) his conditional-release term must be reduced by the amount of time he spend on supervised release, as calculated from the day he was initially released from imprisonment until the expiration of his sentence, without regard for whether he was reimprisoned. We reverse and remand.

DECISION

Avenue for Relief

McCoy contends that the district court has jurisdiction to consider his sentence-correction request under Minn. R. Crim. P. 27.03, subd. 9, and that he was not required to petition for a writ of habeas corpus. We review issues of jurisdiction and procedure de novo. *State v. R.M.H.*, 617 N.W.2d 55, 58 (Minn. 2000) (jurisdiction); *Vazquez v. State*, 822 N.W.2d 313, 315 (Minn. App. 2012) (procedure).

A writ of habeas corpus is a statutory civil remedy used to obtain relief from unlawful imprisonment or restraint. Minn. Stat. § 589.01 (2012); *see also State ex rel Atkinson v. Tahash*, 274 Minn. 65, 71, 142 N.W.2d 294, 298-99 (1966) (holding that prisoners released from imprisonment but subject to conditions and revocation of release are entitled to habeas corpus relief). But Minn. R. Crim. P. 27.03, subd. 9, provides that “[t]he court may at any time correct a sentence not authorized by law.”

McCoy sought relief from the district court arguing that the department of corrections improperly extended his five-year conditional-release term. While McCoy arguably could have petitioned for a writ of habeas corpus due to the restraints imposed by his conditional release, his challenge is to the legality of his sentence under the conditional-release provision in Minn. Stat. § 609.109, subd. 7(a) (repealed 2006). Because McCoy is questioning whether the department of corrections acted in conformity with the statute when it extended the expiration date of his conditional-release term, his challenge falls within the purview of Minn. R. Crim. P. 27.03, subd. 9. Accordingly, the district court erred by concluding that McCoy's proper avenue for relief was to petition for a writ of habeas corpus.

Calculating conditional-release term

McCoy argues that the district court erred by determining that the department of corrections properly calculated the expiration date for his conditional release. We review the district court's interpretation of sentencing statutes de novo, as a question of law. *Miller v. State*, 714 N.W.2d 745, 747 (Minn. App. 2006).

McCoy was convicted of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(a) (1998), and was sentenced to 98 months in prison followed by five years of conditional release. Minn. Stat. § 609.109, subd. 7(a) (1998), provides that an individual convicted of criminal sexual conduct for the first time must be sentenced to a five-year conditional release term "minus the time the person served on supervised release." For offenders who committed crimes after August 1, 1993, "supervised release" is the period of time after an inmate has completed his "term of

imprisonment and any disciplinary confinement period imposed by the commissioner due to the inmate's violation of any disciplinary offense rule." Minn. Stat. § 244.05, subd. 1b (1998). The inmate's "term of imprisonment" is "the period of time equal to two-thirds of the inmate's executed sentence." Minn. Stat. § 244.01, subd. 8 (1998). If a condition of supervised release is violated, the commissioner of corrections can revoke supervised release and reimprison the offender. Minn. Stat. § 244.05, subd. 3 (1998).

McCoy argues that his conditional-release term must be reduced by the 25 months and 22 days he asserts he spent on supervised release, claiming that "[t]he period of time that must be deducted from the conditional release term is a fixed duration bounded by the day the offender is released from prison and the time that he has remaining on his sentence." We disagree.

In *State v. Ward*, this court overturned a district court order adjusting the expiration date of the offender's conditional release to account for supervised release spent both in and out of incarceration. ___ N.W.2d ___, ___, 2014 WL 1408059, at *4 (Minn. App. Apr. 14, 2014). *Ward* establishes that time spent on supervised release is time when the offender is in the community under supervision and does not include time spent in custody because of supervised-release violations. *Id.*; see Minn. R. 2940.0100, subp. 31 (1997) (defining "supervised release" as "that portion of a determinate sentence served by an inmate in the community under supervision and subject to prescribed rules"). The conditional-release term is not reduced by the time an offender spent in custody on a supervised-release revocation. *Ward*, 2014 WL 1408059, at *4. Accordingly, McCoy's conditional release term is five years reduced by the time he

served on supervised release when he was out of prison and subject to supervision in the community. Because the record provides no explanation of how McCoy's conditional-release expiration date was calculated, we remand to the district court for further proceedings consistent with this opinion and the *Ward* opinion.

Reversed and remanded.