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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1348**

Gary Allen Kachina, petitioner,
Appellant,

vs.

Tom Roy,
Commissioner of Corrections,
Respondent.

**Filed January 22, 2013
Affirmed
Rodenberg, Judge**

Rice County District Court
File No. 66-CV-12-1619

Gary Allen Kachina, Faribault, Minnesota (pro se appellant)

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

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

UNPUBLISHED OPINION

RODENBERG, Judge

In this habeas appeal challenging a prison disciplinary proceeding, appellant argues that (1) the finding of a disciplinary violation was based on facts not in evidence; (2) the delay between the alleged violation and the disciplinary hearing violated

appellant's right to procedural due process; and (3) the district court erred in failing to hold an evidentiary hearing on appellant's habeas petition. We affirm.

FACTS

Appellant Gary Kachina was convicted of first-degree burglary in 2010. He was committed to the custody of the Minnesota Department of Corrections (DOC) for 57 months. Shortly thereafter, appellant was directed to complete chemical-dependency treatment. Appellant entered the Atlantis chemical-dependency treatment program at the Minnesota Correctional Facility in Lino Lakes in February 2011.

In July 2011, appellant was terminated from the treatment program. Based on his failure to complete treatment, appellant received notice of a prison disciplinary violation on September 27, 2011. The notice alleged that appellant violated rule 510 of the Offender Discipline Regulations, which provides: "No offender ordered to complete treatment will be allowed to voluntarily terminate his/her program participation and involuntary termination for any reason will be a violation of this rule." The rule prescribes a maximum penalty of 360 days of extended incarceration.

An evidentiary hearing regarding the alleged disciplinary violation was held on October 26, 2011. The treatment director from the Atlantis program testified that appellant had continuously struggled with the program and did not make any progress in treatment. She testified that appellant was defiant and dishonest, and that he violated the confidentiality of other offenders in the program. She further testified that appellant was placed on probation twice while in the program. When appellant met with the treatment director to discuss his termination, appellant admitted that he violated the program's

probation contract. The treatment director testified that appellant did not file an appeal or request clarification of the termination.

The hearing officer found, by a preponderance of evidence, that appellant had violated rule 510 of the Offender Discipline Regulations by failing to complete the treatment program. The officer issued written findings detailing the reasons for appellant's termination "after being given numerous chances to remain in the program." The hearing officer imposed 45 days of extended incarceration as a penalty.

Appellant filed an administrative appeal with the warden of the Minnesota Correctional Facility in Stillwater. Appellant argued that he had not been informed of his right to appeal his termination from the Atlantis program, and that his transfer from one correctional facility to another and the resulting delay in charging him with a disciplinary violation had prejudiced his ability to prepare a defense. The warden affirmed the hearing officer's decision, noting that appellant had admitted violating his probation contract with the treatment program. The warden found that "[a]ll assignment terminations can be appealed, and this information is relayed in the offender handbook that is given to all offenders."

Appellant filed a petition for habeas corpus in May 2012. He argued that the disciplinary hearing violated his right to procedural due process. He asserted that the DOC did not charge him with a disciplinary violation until two months after he was terminated from the treatment program or inform him of the right to appeal the treatment termination. The district court denied the petition without holding an evidentiary hearing, finding that the facts alleged did not entitle appellant to relief. This appeal followed.

DECISION

Appellant challenges the district court's denial of his petition for a writ of habeas corpus. Habeas corpus is a civil remedy that permits inmates to seek "relief from imprisonment or restraint." Minn. Stat. § 589.01 (2012). On appeal from the denial of a habeas petition, we accord the district court's factual findings great deference and will sustain them so long as they are "reasonably supported by the evidence." *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006). Questions of law pertaining to habeas petitions are subject to de novo review. *Id.*

I.

Appellant first argues that the imposition of prison discipline infringed on his right to procedural due process because, he alleges, both the prison warden and the district court relied on facts not in evidence. Specifically, he maintains that he was neither informed of his right to appeal his termination from the treatment program nor given the offender handbook referred to by the warden and the district court in upholding the disciplinary penalty.

Our federal and state constitutions provide that no person may be deprived of "life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. Procedural due process "imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause." *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 901 (1976).

Minnesota courts have recognized that prisoners enjoy a protected liberty interest in their supervised release dates. *Carillo v. Fabian*, 701 N.W.2d 763, 773 (Minn. 2005). This liberty interest “triggers a right to procedural due process before that date can be extended.” *Id.* However, prisoners are not entitled to the full panoply of rights afforded to accused persons in criminal prosecutions. *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S. Ct. 2963, 2975 (1974). In the case of prison disciplinary proceedings, an inmate’s right to procedural due process generally requires only the following protections: (1) written notice of a disciplinary violation at least 24 hours before the hearing; (2) a hearing at which the inmate may present evidence and call witnesses; (3) an impartial decision-maker; and (4) a written explanation of the evidence and reasoning relied on in imposing the disciplinary action. *See id.* at 563–67, 94 S. Ct. at 2978–80.

Appellant does not dispute that he received notice of the disciplinary violation detailing the nature of the allegation and the specific rule violated. Appellant had ample notice of the hearing and had a month to prepare for it. And appellant does not deny that the hearing officer and prison warden both issued written explanations of the evidence, including their reasoning for imposing the disciplinary penalty. Rather, appellant asserts that he was never informed of his right to appeal his termination from the treatment program. Appellant did not argue below, nor does he argue on appeal, that he was terminated from the treatment program improperly. According to the hearing officer’s written findings, the program director testified that appellant struggled while in the program. He was “defiant, dishonest, [and] violated [the] confidentiality of other offenders in the program.” Appellant failed to progress in treatment, was placed on

probation twice, and was terminated “after being given numerous chances to remain in the program.” The program director also testified that, at the time of his termination, appellant admitted that he violated his probation and had no questions for the program staff.

Appellant did not dispute any of this evidence at the disciplinary hearing. His allegation that the program director testified that DOC staff never informed him of the process for appealing treatment terminations is not supported by the record.

The relevant offender regulation expressly provides that “[a]n offender who disagrees with the . . . termination from treatment must follow the grievance procedure” established by the DOC.”¹ Offender Discipline Regulation 510. Whether appellant was aware of his right to appeal the termination is not relevant to the determination of whether he violated rule 510 of the Offender Discipline Regulations.

Likewise, appellant is subject to discipline for violating Offender Discipline Regulation 510(B) regardless of whether he actually received a copy of the offender handbook. The DOC is not required to prove that the inmate received a copy of those regulations in order to establish a violation. *See* Minn. Stat. § 241.01, subd. 3a(b) (2012) (authorizing the DOC to “prescribe reasonable conditions and rules for [inmates’] employment, conduct, instruction, and discipline within or outside the facility”). Moreover, at the disciplinary hearing, appellant did not allege that he never received the

¹ In this case, appellant did not follow DOC grievance procedures following his termination from the treatment program. Appellant did not question his termination at the time it occurred, nor did he send a “kite” asking for an appeal or clarification.

offender handbook. Thus, the warden properly inferred that appellant was informed of his right to appeal the termination, as “this information is relayed in the offender handbook that is given to all offenders.”

Appellant raises a related argument that the district court judge exhibited bias by relying on facts that were not in evidence to find that appellant “did not appeal his dismissal from the [treatment] program, and the notice of his right to do so was contained in the offender handbook provided to all inmates.”

In criminal proceedings, the defendant has a constitutional right to an impartial judge. *State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005). Judges must disqualify themselves whenever their “impartiality might reasonably be questioned,” including when they possess a “personal bias or prejudice concerning a party.” Minn. Code Jud. Conduct 2.11(A), (A)(1). In determining whether disqualification was required, we consider whether “an objective observation of the facts and circumstances would cause a reasonable examiner to question the judge’s impartiality.” *State v. Burrell*, 743 N.W.2d 596, 601 (Minn. 2008). However, we must presume that the judge has discharged his or her duties properly. *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998).

Appellant does not argue that the judge in this case harbored any personal bias or prejudice against him. Rather, he relies on *Dorsey* to argue that the judge’s alleged reliance on facts outside the record amounted to improper bias. In *Dorsey*, a judge in a criminal bench trial independently investigated a fact at issue to clarify a witness’s timeline of events. 701 N.W.2d at 242–44. The supreme court held that, by investigating

a fact not introduced as evidence, the judge violated her obligation as fact-finder to refrain from seeking evidence outside the record. *Id.* at 250.

The district court in the present case did nothing of the sort. It did not investigate facts that were extraneous to the record. Rather, it properly relied on the record—specifically, the written findings of the hearing officer and the prison warden—in denying appellant’s petition. *Dorsey* is therefore inapposite.

Appellant has not established that the district court judge was biased or that the district court relied on facts not in evidence.

II.

Appellant next argues that the two-month delay between his termination from the treatment program and the disciplinary charge, as well as his transfer to another correctional facility during the interim, violated his right to procedural due process. He argues that this delay was prejudicial because he was unable to secure witnesses for the hearing. Appellant does not cite any apposite authority requiring disciplinary charges to be brought within a particular timeframe. DOC policy imposes a time limit for filing disciplinary charges only in cases where the inmate has been placed on prehearing detention status. *See* Offender Discipline Directive 303.010(B)(2)–(3). As appellant was not placed on prehearing detention status, that time limit did not apply.

Internal DOC policy further provides that the *investigation* of a disciplinary violation “will begin within 24 hours of the time the violation is reported,” and the policy requires the investigation to “be completed without unreasonable delay unless there are exceptional circumstances for delaying the investigation.” *Id.*, 303.010(B)(1). However,

this policy pertains only to the investigation. It does not limit the time within which the DOC may commence a disciplinary charge. Appellant proffered no evidence that any delay by the DOC in making the disciplinary charge violated any statute or rule, or was otherwise prejudicial to him.

Regarding appellant's transfer to another facility, the DOC has statutory authority to "determine the place of confinement of committed persons in a correctional facility or other facility." Minn. Stat. § 241.01, subd. 3a(b). Appellant did not argue or establish at the disciplinary hearing that his transfer from one facility to another was for the purpose of hindering his ability to present evidence at the hearing. To the contrary, appellant was offered the opportunity to continue the hearing in order to secure witnesses or other evidence, but he declined that opportunity.

In another case, this court rejected the argument that a three-month delay between the violation and the disciplinary hearing violated the prisoner's rights. *See State ex rel. Griep v. Skon*, 568 N.W.2d 453, 455 (Minn. App. 1997). We observed that "there is no rule or statute that governs the timing of disciplinary proceedings" when an inmate is not subject to prehearing detention. *Id.*

Appellant has not established that any prejudice resulted from either the delay in commencing the disciplinary proceeding or his transfer to another facility. He was not precluded from calling witnesses. Offender regulations permit witness testimony to be presented "in person, by videoconference, telephone, written statement, or video/audio tape." Offender Discipline Directive 303.010(G)(2)(d)(2). As noted above, the record reflects that appellant was offered an opportunity to continue the proceeding in order to

secure witnesses, as he had none available for the hearing as scheduled, but he indicated that he was “ready to proceed.” Appellant concedes that he was terminated from the treatment program and does not argue that the termination was improper. Moreover, appellant has not shown that the two-month delay violated any procedural rules, impaired his ability to call witnesses, or otherwise prejudiced him in the disciplinary proceeding. The district court therefore did not err in concluding that the delay did not violate appellant’s right to procedural due process.

III.

Appellant argues that the district court erred in failing to hold an evidentiary hearing on his habeas petition.² Courts are not required to hold a hearing on a habeas petition if the petitioner fails to establish a prima facie case for relief. *Sanders v. State*, 400 N.W.2d 175, 176 (Minn. App. 1987), *review denied* (Minn. Apr. 17, 1987). A hearing is required only if the petition raises a factual dispute. *Seifert v. Erickson*, 420 N.W.2d 917, 920 (Minn. App. 1988), *review denied* (Minn. May 18, 1988).

Here, the underlying disciplinary violation—appellant’s termination from a mandated treatment program—was not in dispute. Appellant’s habeas petition did not allege disputed facts that would entitle him to relief. *Cf. id.* (affirming that the petitioner was not entitled to an evidentiary hearing when the underlying facts were undisputed and

² Appellant also argues that the district court “never even order[ed] or look[ed] at the Department of Corrections disciplinary hearing transcripts.” Following a special-term order directing appellant to clarify the existence of any hearing transcripts, appellant filed an amended statement acknowledging that “there were no transcripts presented to the Rice County District Court.” Thus, the district court was not provided with any transcripts to consider.

the habeas petition alleged only questions of law). Appellant failed to make a prima facie showing entitling him to an evidentiary hearing, and the district court did not err in denying his habeas petition without a hearing.

Affirmed.