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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0137**

Jeffrey Alan Truelson, petitioner,
Appellant,

vs.

Joan Fabian, Commissioner of Corrections,
Respondent.

**Filed April 8, 2008
Reversed and remanded
Toussaint, Chief Judge**

Washington County District Court
File No. 82-C4-07-004804

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Considered and decided by Toussaint, Chief Judge; Peterson, Judge; and Wright, Judge.

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

This appeal is from an order denying appellant Jeffrey Alan Truelson's petition for a writ of habeas corpus challenging his continued incarceration after he reached his supervised-release date. Truelson argues that respondent Joan Fabian, Commissioner of Corrections, is required to release him because he did not violate his conditions of release. We reverse and remand to the district court for further proceedings.

FACTS

Truelson was sentenced in December 1998 in Meeker County to 119 months for first-degree criminal sexual conduct. He reached his supervised-release date on April 5, 2005. As required by statute for a level III sex offender, he was required to be released on intensive supervised release. The special conditions of release for intensive supervised release required Truelson to "successfully complete sex offender programming as established by" the Minnesota Sex Offender Program. Truelson was facing a pending civil commitment as a sex offender and was then housed at the St. Peter Security Hospital. The release plan also required that if Truelson was released from the civil-commitment hold, he was to immediately notify his assigned agent for reporting instructions.

The district court dismissed the civil-commitment petition against Truelson on September 29, 2005. On October 3, 2005, Truelson was transported from the St. Peter Security Hospital back to Meeker County, where the transporting officer tried contacting Truelson's aunt and cousin, who apparently lived in that county. According to the

violation report, this effort to find a residence for Truelson was unsuccessful. A warrant was issued the same day for Truelson's arrest, and he was taken to the Meeker County Jail, apparently never having been outside the custody of the transporting officer. A violation report was issued several days later, alleging that Truelson was in violation of one of the standard release conditions, which required that he "reside at an approved residence."

A supervised-release revocation hearing was held on October 12, 2005. The hearings-and-release-unit (HRU) officer found that Truelson was in violation, stating: "Decision is to find violation, offender has the responsibility to secure and maintain a residence." As a sanction, Truelson was returned to prison and the "final disposition" was continued for 90 days.

Four additional HRU hearings were held to review Truelson's custody status stemming from his failure to have an approved residence. At one point, Truelson appeared to have a plan to be housed in a motel in Iowa near his mother's residence. But Iowa denied the request for an interstate transfer of supervision, based on a finding that a motel room had not been reserved for Truelson after all.

In October 2006, a year after the initial revocation of supervised release, the HRU officer, while determining that Truelson's projected release date should be extended for 180 days, questioned the initial decision that Truelson had violated his intensive-supervised-release conditions:

After review it appears that [Truelson] should not have been found to be an intensive supervised release violator but rather an intensive supervised release offender returned, without finding of violation, for development of a

new intensive supervised release re-release plan. This is a status for which hearings and release unit has no current operational label and which, by default, has also been referred to as release violator, however inaccurately.

The HRU officer, however, continued Truelson's incarceration "up to 180 days for offender to submit a release plan with assistance of agent and case manager."

Truelson submitted a number of offender "kites" to his case manager suggesting various halfway houses as alternative placements. The case manager responded to these "kites" after investigation, informing Truelson that the alternative placements were not possible. The executive officer of the HRU also responded to Truelson's letter, discussing the department of corrections' efforts to arrange placement in the community, including its contacts with Truelson's mother in Iowa. The HRU periodically held hearings on Truelson's continued incarceration that resulted in decisions continuing Truelson's incarceration pending successful placement in an approved residence.

Truelson filed a petition for a writ of habeas corpus, arguing that his continued incarceration was unlawful. The district court denied the petition, concluding that Truelson could be incarcerated based on his failure to find approved housing. The district court stated that it was "not unsympathetic to [Truelson's] plight" but that Truelson had not shown that the department of corrections could not keep him in prison until efforts to find a suitable residence were successful.

D E C I S I O N

The district court's findings to support a ruling on a petition for habeas corpus are entitled to great weight and will be upheld if reasonably supported by the evidence. *Northwest v. LaFleur*, 583 N.W.2d 589, 591 (Minn. App. 1998), *review denied* (Minn.

Nov. 17, 1998). Questions of law, however, are reviewed de novo. *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006). The district court concluded that the issues presented were questions of law that could be resolved without an evidentiary hearing. Truelson agrees, stating in his brief that his petition “presents only questions of constitutional law and statutory interpretation.”

Truelson argues that there is no evidence to support the finding that he violated his supervised-release conditions by failing to have a residence to move into upon his release. He argues that, without such a violation, his continued incarceration is unlawful. The district court disagreed, noting in its order that Truelson “has failed to cite case law or other authority preventing DOC from using the [prison] to implement intensive supervised release given the lack of any suitable residence for him.”¹

The department of corrections has adopted rules governing the development of release plans for inmates prior to their supervised-release dates. Minn. R. 2940.0500 - .2900 (2007). As Truelson points out, the rules provide: “Refusal to cooperate in determining place of residence, employment plans, or conditions of release shall result in an extension of the inmate’s term of imprisonment.” Minn. R. 2940.2600. Truelson

¹ The district court placed some reliance on this court’s unpublished opinion in *State ex rel. Johnson v. Fabian*, 2005 WL 704302 (Minn. App. Mar. 29, 2005), *review denied* (Minn. June 14, 2005). In *Johnson*, a sex offender’s supervised release was revoked because no residence could be found in which to house him, and he could not find employment. But Truelson has been incarcerated for more than two years after his revocation, while Johnson was revoked after only 60 days. Truelson remains incarcerated despite a finding by an HRU hearing officer that the initial finding that Truelson violated his supervised-release conditions was in error. Moreover, the initial release plan in *Johnson* was not premised on the offender’s residence at a security hospital or on the apparent assumption that he would be civilly committed, as Truelson’s was.

argues that this rule limits his duties with respect to finding a residence and that it is the HRU's duty to determine a place of residence when it develops a release plan. But a rule authorizing sanctions for "[r]efusal to cooperate" does not necessarily mean that an offender has no duty other than to "cooperate." Although the record establishes that Truelson has "cooperate[d]" in looking for an approved residence, nothing in the rules or statutes requires the department of corrections to find him a place to live after supervised release as part of his release plan. The statute requires the department of corrections to consider various factors when approving the residences of level III sex offenders, but it does not require the department of corrections to find a residence for the offender. Minn. Stat. § 244.052, subd. 4a(a) (2006).

Nevertheless, Truelson has been held for more than two years beyond the release of his civil-commitment hold based on an initial finding that he violated his intensive supervised-release conditions by not securing a place to live. But there is no indication that the DOC has reconsidered Truelson's release plan, despite the HRU officer's finding in October 2006 that Truelson should be classified as "an intensive supervised release offender returned" "for development of a new intensive supervised release re-release plan." The initial release plan contemplated Truelson's residency at the security hospital, but subsequent events have called into question the viability of that plan.

The standard conditions of release require the offender "be transported directly to the residential facility" if the offender "is mandated for residential placement." Here, Truelson was mandated for placement at St. Peter, in the Minnesota Sex Offender Program: the St. Peter Security Hospital is listed as his residence and the conditions of

release require that Truelson complete sex-offender programming at Minnesota Sex Offender Program. Truelson remained at St. Peter for almost six months following his April 2005 supervised release, but no new release plan was developed once the civil-commitment petition was dismissed.

Some delay in the development of a new release plan is understandable, given the efforts to find Truelson a residence. But even after a number of HRU hearings have been held and Truelson's incarceration has been extended several times, his release plan has not been reviewed to determine whether his conditions of release should be modified. In particular, the original release plan requires that Truelson "successfully complete sex offender programming," but there is no record that the department of corrections has considered whether Truelson should be placed in a residential treatment facility rather than continue with the so-far futile efforts to find housing for a level III sex offender in the Meeker County area.

The rules do not specifically require the HRU to reconsider a release plan or the conditions of release. The rules allow an offender on supervised release to request a modification of the standards of release. Minn. Rules 2940.2700. The HRU must then review the request and respond in writing. *Id.* While Truelson has questioned his incarceration status in a number of prison "kites," most of these kites just requested further information or asked specific questions. The executive officer of HRU responded to Truelson in writing in March 2007, but he did not construe Truelson's inquiry as a request for modification of the release plan.

Thus, Truelson remains incarcerated without a valid finding that he has violated his conditions of supervised release. We conclude that, in these circumstances, the burden is on the HRU to consider a modification of the release plan. One of the HRU's own hearing officer's reports concluded that Truelson did not violate his conditions of release, and the DOC "should have temporarily returned the offender for *development of a suitable intensive supervised release re-release plan* but done so without a finding of violation." (Emphasis added.)

Arguably, the responses of Truelson's case manager and agent to his "kites," investigating various placement options, satisfy the HRU officer's requirement that the department of corrections cooperate in Truelson's attempts to modify his release plan. But we conclude that more is required of the HRU, given the flawed assumption on which Truelson's initial release plan was based. Without a review by the HRU of Truelson's release plan, it appears that his incarceration will simply be continued, without a valid finding that he has ever violated the conditions of his release. Truelson cannot simply remain incarcerated under a "temporary return for re-placement" status that the department of corrections admits has no legal basis.

Accordingly, we reverse and remand this matter to the district court for further proceedings that will ensure review by the HRU of Truelson's release plan and a consideration of the modification of his conditions of supervised release.

Reversed and remanded.