STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1874

Ofiong Louis Sanders, petitioner,
Respondent,

vs.

Joan Fabian, Commissioner of Corrections,
Appellant.

Filed September 2, 2008
Reversed; motion denied
Toussaint, Chief Judge

Washington County District Court
File No. C1-07-3416

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Considered and decided by Toussaint, Chief Judge; Kalitowski, Judge; and Muehlberg, Judge.*

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

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

TOUSSAINT, Chief Judge

Appellant Joan Fabian, Commissioner of Corrections, challenges the district court order granting respondent Ofiong Louis Sanders's habeas corpus petition by vacating the disciplinary-confinement time added to respondent's resentence and ordering appellant to recalculate respondent's supervised-release date. Respondent filed a motion to dismiss this appeal as moot. Because the district court erred in vacating the disciplinary-confinement time, we reverse. Because of the lack of clarity in the law, we decline to exercise our discretion to dismiss this appeal as moot, and respondent's motion is denied.

FACTS

In 1997, respondent was convicted of first-degree burglary and was sentenced to 180 months in prison, an upward durational departure, based on the district court's determination that respondent was a career offender. As a result of this court's decision in *State v. Huston*, respondent no longer met the criteria for an upward durational departure based on career-offender status. 616 N.W.2d 282, 284 (Minn. App. 2000). In September 2001, without a hearing, the district court ordered that respondent was a "dangerous offender" and imposed a new 180-month sentence (first resentence). Respondent appealed, and this court reversed and remanded, finding that respondent's due-process rights had been violated when the district court failed to conduct a hearing to determine whether respondent met the criteria for a "dangerous offender." *See State v. Sanders*, 644 N.W.2d. 483, 488 (Minn. App. 2002).

In July 2002, the district court conducted a hearing and resentenced respondent to 180 months in prison (second resentence) based on its conclusion that respondent was a "dangerous and violent offender" and a "danger to the public safety." The district court gave respondent 1,844 days of jail credit for the time he had served in custody since his arrest.

Following the second resentencing, appellant calculated respondent's supervised release date, adding 225 days of disciplinary-confinement time that respondent had received prior to his second resentencing.[1] Respondent filed a petition for writ of habeas corpus, requesting that the district court vacate the disciplinary-confinement time that accrued and was added to his supervised-release date. The district court granted respondent's petition, and respondent was subsequently released from imprisonment.

D E C I S I O N

I.

Respondent argues that this appeal is moot and should be dismissed because he has been released on supervised release, and therefore, even if the district court's order were reversed, the 225 days of disciplinary time could not be restored because respondent would have been released on May 8, 2008.

Appellate courts will decide only actual controversies. *State v. Arens*, 586 N.W.2d 131, 132 (Minn. 1998). If this court is unable to grant effectual relief, the matter is deemed moot. But mootness is a "flexible discretionary doctrine, not a mechanical rule"

[1] The district court's habeas order indicates that 296 days were added, but the parties in their submissions, as well as at oral argument, agree that 225 days were added.

to be invoked automatically. *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984).

Under the former sentencing scheme in which offenders did not serve a term of supervised release after their prison sentence, an offender's release generally mooted his or her claim for relief. *See State v. Shotley*, 305 Minn. 384, 389-90, 233 N.W.2d 755, 759 (1975). Here, however, respondent has not been discharged from his sentence; he must still serve his supervised-release term. Disciplinary-confinement time is added and served *before* an inmate is released on supervised release. Minn. Stat. § 244.05, subd. 1b(a), (b) (2006). But we are reluctant to state categorically that disciplinary-confinement time is now a moot issue because of respondent's release on supervised release. Accordingly, we deny respondent's motion to dismiss.

II.

On appeal, we "are to give great weight to the [district] court's findings in considering a petition for a writ of habeas corpus and will uphold the findings if they are 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 are reviewed de novo. *Id.*

In granting respondent's petition for writ of habeas corpus, the district court ordered that the "disciplinary confinement time added to [respondent's] vacated sentences shall be vacated." The district court stated that the "disciplinary confinement time was specific to the first two sentences, both of which have been vacated, and cannot be counted towards [respondent's] new sentence."

Appellant argues that the district court erred in vacating the disciplinary-confinement time, noting that appellant is statutorily required to add disciplinary-confinement time to an inmate's term of imprisonment. *See* Minn. Stat. § 244.05, subd. 1b (2006).[2] But appellant's reliance on this section is unpersuasive. Respondent does not dispute that appellant is required to impose disciplinary-confinement time. In fact, respondent does not even dispute the disciplinary-confinement time he received under the previous sentence. Instead, the issue here is what impact, if any, resentencing has on existing disciplinary sanctions.

Respondent contends that the district court properly eliminated his disciplinary-confinement time because, when he was resentenced, his previous sentences were vacated. To support this contention, respondent relies on *North Carolina v. Pearce*, 395 U.S. 711, 89 S. Ct. 2072 (1969), *overruled in part on other grounds*, *Alabama v. Smith*, 490 U.S. 794, 109 S. Ct. 2201 (1989). In *Pearce*, the Court stated that when a *conviction*

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[2] Minn. Stat. § 244.05, subd. 1b provides:

> (a) . . . 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 term 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 . . . . The amount of time the inmate serves on supervised release shall be equal in length to the amount of time remaining in the inmate's executed sentence after the inmate has served the term of imprisonment and any disciplinary confinement period imposed by the commissioner.
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> (b) No inmate who violates a disciplinary rule . . . shall be placed on supervised release until the inmate has served the disciplinary confinement period for that disciplinary sanction or until the inmate is discharged or released from punitive segregation confinement, whichever is later. . . .

has been reversed, the defendant's "slate has been wiped clean" and "the unexpired portion of the original sentence will never be served." *Id.* at 721, 89 S. Ct. at 2078 (emphasis added).

Respondent's reliance on *Pearce* is misplaced. First, respondent's conviction was never reversed, and there is no indication that the *Pearce* logic, which applies to conviction-reversal cases, should be extended to resentencing cases. The distinction between conviction reversals and sentence vacations is particularly important in this case. That is, if respondent's conviction had been reversed, his disciplinary sanctions would have accrued during a time in which he was not rightfully under appellant's control. But here, at all times relevant, respondent has been rightfully under appellant's authority and subject to appellant's rules. To vacate his disciplinary sanction merely because he was resentenced would encourage inmates who have resentencing motions or postconviction petitions pending to believe they cannot be sanctioned for disciplinary violations. It might also encourage such motions or petitions as attempts to vacate disciplinary sanctions previously imposed.

Second, respondent's "clean slate" theory derived from *Pearce* actually works against him. Essentially, respondent argues that anything "connected" with his previous sentences should be "wiped clean" upon resentencing. But if respondent's "clean slate" theory is taken to its logical conclusion, his resentencing would have resulted in 180 months in prison without any recognition of the time served under his previous sentences. Instead, respondent wishes to have it both ways—he wants the 1,844-day jail credit for the days served in connection with his previous sentences, but he does not want the

disciplinary-confinement time in connection with his previous sentences. Aside from citing *Pearce*, which was misplaced, respondent cites no authority that would require this court to affirm the district court's decision to vacate his disciplinary-confinement time.

While the district court did not provide any legal authority to support its conclusion, it apparently viewed the resentencing as a sharp separation from the original sentence. But resentencing is merely a continuation or modification of the original sentence. As noted above, respondent's 1,844-day jail credit is an implicit recognition of the continuation of the previous sentences. Further, the language in the sentencing statutes regarding disciplinary-confinement time is fairly broad, referring to "term of imprisonment" and the "amount of time the inmate actually serves in prison." *See, e.g.*, Minn. Stat. §§ 244.01, .05, .101 (2006). The statutory focus on "imprisonment" without distinction between original sentences and resentences suggests that imprisonment is an overarching concept that ties together the original sentence and any resentences. Minnesota Supreme Court caselaw also indicates that the relationship between a previous sentence and a resentence is fluid. *See, e.g.*, *Hankerton v. State*, 723 N.W.2d 232, 240 (Minn. 2006) (recognizing that resentencing is merely continuation of original prosecution for double jeopardy purposes); *Spears v. State*, 725 N.W.2d 696, 698 (Minn. 2006) (stating that appeals that followed remands for resentencing were part of "extended direct appeal"). The district court erred in vacating the disciplinary-confinement time.

Reversed; motion denied.