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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1894

State of Minnesota, ex rel.
Douglas Gerard Ibberson, OID #113543, petitioner,
Appellant,

vs.

Joan Fabian, Commissioner of Corrections,
Respondent.

Filed August 18, 2009
Affirmed
Ross, Judge

Chisago County District Court
File No. 13-CV-08-914

Douglas G. Ibberson, OID-113543, MCF-Rush City, 7600 525th Street, Rush City, MN 55069 (pro se appellant)

Lori Swanson, Attorney General, Kelly S. Kemp, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Krista J. Guinn, 1450 Energy Park Drive, Suite 200, St. Paul, MN 55108-5219 (for respondent)

Considered and decided by Schellhas, Presiding Judge; Ross, Judge; and Larkin, Judge.

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

ROSS, Judge

This habeas corpus appeal challenges the constitutionality of the imposition of alcohol-related rehabilitative duties on a person with a 30-year history of alcohol-related driving offenses. We must decide whether a prisoner's constitutional rights are violated when the state conditions his supervised release on his participation and progress in strict chemical-dependency treatment. Douglas Ibberson appeals the district court's refusal to issue a writ of habeas corpus after Ibberson was reimprisoned and directed to complete chemical-dependency treatment for violating the terms of his supervised release. He contests the district court's finding that the state did not require him to confess to criminal acts as a part of his treatment, and he contends that the district court erred when it failed to consider his constitutional arguments. He also asserts for the first time on appeal that the revocation of his supervised release violated the constitution by subjecting him to double jeopardy. Because none of Ibberson's arguments justify a writ of habeas corpus, we affirm.

FACTS

Ibberson was convicted in 2003 of fleeing a peace officer, first-degree test refusal, driving after his license was cancelled, and obstructing legal process. The state had also charged Ibberson with driving while impaired for the same incident, but he was found not guilty. Ibberson's extensive record included over a dozen driving offenses related directly or indirectly to drunk driving. The district court sentenced him to 36 months in

prison. After Ibberson served 18 months, he was released on supervision subject to certain conditions, including that he abstain from consuming alcohol.

Three months later, Ibberson consumed alcohol. The department of corrections hearing officer was not impressed by Ibberson's reason. (Ibberson had explained that "he was just really thirsty.") The hearing officer determined that Ibberson had violated the terms of his release and found that aggravating factors exist, including that Ibberson's violation was "consistent with his offense" and that he violated soon after being released. She noted that, "[c]onsidering the offense of 1st degree DWI, use of alcohol will not be tolerated during the subject's supervision period." The department cancelled Ibberson's supervised release for a period of 150 days. The department also directed Ibberson to undergo chemical-dependency treatment. Because Ibberson refused to participate in treatment, the department of corrections revoked his supervised release entirely.

Ibberson petitioned for a writ of habeas corpus in the district court. The district court denied his petition without an evidentiary hearing, and this appeal follows.

D E C I S I O N

A writ of habeas corpus provides a means "to obtain relief from unlawful imprisonment or restraint." *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006) (quotation omitted); *see* Minn. Stat. § 589.01 (2008). A detainee may apply for the writ to challenge a department of corrections decision to revoke supervised release. *Guth*, 716 N.W.2d at 27. This court reviews a decision to revoke an offender's conditional release for an abuse of discretion. *Id.* This court also defers to the district court's habeas-application findings and will sustain them

if they are reasonably supported by the evidence. *Id.* at 26. We review questions of law de novo. *Id.*

I

Ibberson bases one of his constitutional challenges on the factual assertion that the department of corrections illegally required him to confess to crimes. He contests the district court's factual finding that he provided no evidence supporting his claim that his Fifth Amendment rights against compelled self-incrimination were violated. Ibberson suggests that a 2004 report contains that evidence. The report discusses his performance in chemical-dependency treatment and states that his prognosis was "poor" because "[h]is behavior appeared to demonstrate an inability to internalize the principles of [the treatment] program . . . . Mr. Ibberson needs to admit and accept that he has a problem with chemical use and criminal behavior." Ibberson contends that this constitutes evidence that he was required "to admit to a D.W.I. that he was found not guilty of . . . [a]nd further admit that he was involved in a traffic accident that was false."

Ibberson misinterprets the evidence. The report does not prove that he was required to confess to any particular crime as a part of his treatment. The report indicates that his treatment required him to admit that he has a problem with chemical use and criminal behavior in general. Ibberson's treatment required him to engage in cognitive behavioral therapy intended to address his "[c]riminal and [a]ddictive thinking patterns and behavioral tactics." Ibberson's record gives ample basis to justify this aspect of the treatment. Ibberson's offenses stretch back to 1974 and include multiple impaired-driving convictions. His alcohol-related convictions rendered his 2003 refusal to submit

to chemical testing a first-degree crime. *See* Minn. Stat. § 169A.24, subd. 1 (2002). There is no record evidence that Ibberson was required to confess to any specific crimes, let alone crimes he was not already convicted of.

Ibberson emphasizes that he was not convicted for driving while impaired. Ibberson correctly notes that the jury did not convict him on the charge of driving while impaired in 2003, but it did convict him of refusal to submit to a chemical test, a crime that is treated in Minnesota as "driving while impaired." *See id.*, subd. 1(1) (stating that "[a] person who violates section 169A.20" and has committed certain qualifying prior offenses "is guilty of first-degree driving while impaired"); *see also State v. Omwega*, ___ N.W.2d ___, 2009 WL 2151179, at *1 (Minn. App. July 21, 2009) ("Based upon his *refusal to submit to a chemical test* . . . [the defendant] was charged with felony first-degree driving while impaired." (emphasis added)). Because Ibberson was convicted of driving while impaired by virtue of his refusal to submit to chemical testing, his concern that he might now inculpate himself by "confessing" to the crime in treatment is not legally significant.

II

Ibberson argues that the department of corrections violated several of his constitutional rights when it rescinded his supervised release. He contends that the decision to imprison him for the remainder of his 36-month sentence and to direct him again to participate in treatment violates the First, Fifth, Eighth, and Fourteenth Amendments. We conclude that none of Ibberson's constitutional rights were violated.

The state may not punish criminal defendants more than once for the same offense. U.S. Const. amend. V. Ibberson asserts that ending his supervised release subjected him to double jeopardy, arguing that he "was already punished once" when he was sentenced to 36 months in the custody of the department of corrections. The argument does not appreciate that he has not served his full sentence. He was placed on supervised release after 18 months' imprisonment, the terms of which he soon violated.

Prison discipline does not constitute a double jeopardy violation as long as the sanction is remedial in nature. *State v. McKenzie*, 542 N.W.2d 616, 619 (Minn. 1996). In this case, Ibberson violated the terms of his release by consuming alcohol shortly after he was released into the community. The hearing officer concluded that allowing Ibberson to remain in the community while receiving treatment was not viable in light of Ibberson's attitude that "he did not have to stop drinking." Consequently, he was required to undergo custodial treatment so his participation could be supervised. The department's revocation of Ibberson's conditional supervised release was remedial, not punitive.

Ibberson argues that his treatment program's requirement that he confess to criminal acts violates his Fifth Amendment right against self-incrimination. As noted above, the evidence sustains the district court's finding that there was no such requirement of Ibberson as a part of his treatment. Because "[c]ompulsion does not violate the Fifth Amendment . . . unless the information the claimant would be compelled to divulge is incriminating," *Johnson v. Fabian*, 735 N.W.2d 295, 309 (Minn. 2007),

Ibberson's Fifth Amendment rights are not implicated by his participation in chemical-dependency treatment.

Ibberson claims that the revocation of his supervised release violated his right to due process. The district court concluded that the hearing granted to Ibberson satisfied constitutional procedural requirements. We agree. The Constitution requires that revocation hearings be conducted in a fashion that meets certain minimum due process requirements. U.S. Const. amend. XIV, § 1; *State ex rel. Taylor v. Schoen*, 273 N.W.2d 612, 617 (Minn. 1978). The district court found that the revocation hearing met the requirements described in *Schoen*, and Ibberson offers no basis to conclude that the district court's finding was erroneous.

Finally, Ibberson contends that the revocation of his supervised release submitted him to cruel and unusual punishment in violation of the Eighth Amendment and that requiring him to participate in chemical-dependency treatment violated his First Amendment right to freedom of speech. He presents no substantive argument to support these facially meritless claims. We need not consider them, unless error is obvious. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997). We discern no obvious error in the district court's ruling.

Affirmed.