STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0991

State of Minnesota, ex rel. Roland Dwight Yennie, Jr., petitioner,
Appellant,

vs.

Joan Fabian, Commissioner of Corrections,
Respondent.

Filed August 18, 2009
Affirmed
Toussaint, Chief Judge

Rice County District Court
File No. 66-CV-07-3155

Bradford W. Colbert, Albert C. Wigglesworth, Legal Assistance to Minnesota Prisoners, 875 Summit Avenue, Room 254, St. Paul, MN 55105 (for appellant)

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

Considered and decided by Toussaint, Chief Judge; Worke, Judge; and Stauber, Judge.

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

TOUSSAINT, Chief Judge

This appeal is from an order denying appellant Roland Dwight Yennie, Jr.'s petition for a writ of habeas corpus challenging the revocation of his release under the Challenge Incarceration Program (CIP). We affirm.

D E C I S I O N

In reviewing an order denying a petition for a writ of habeas corpus, this court gives great weight to the district court's findings of fact 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. *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

Appellant was convicted in 2004 of first-degree controlled substance offense and sentenced to 110 months in prison. He gained admission into the CIP, which allows for early release from prison, and completed Phase I, the in-prison portion of the program. After his release, he was found in violation of his CIP release conditions and returned to prison to serve out his term. Appellant filed a habeas petition, arguing that the department of corrections was required to apply the *Austin* factors before revoking his release. *See State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980) (requiring three findings before probation may be revoked). Appellant also claimed that the CIP revocation violated his right to due process. The district court denied the petition, rejecting both arguments.

Appellant argues that he did not violate the conditions of his release under the CIP program when he left a cursory phone message with one of his agents concerning his planned activities for the day. Appellant concedes that this court reviews the decision to revoke CIP release only for a clear abuse of discretion. *See Guth*, 716 N.W.2d at 27.

Appellant, who was required to keep his agents informed of his whereabouts, left a voice message stating, "I'm going out to bug all the people that I've put applications in at. I need a job." This cursory phone message came after appellant had failed to keep agents fully informed about his activities. Appellant had been warned two weeks earlier, after he failed to call in for two days, and two days before he had again been warned about giving "vague details in his voice messages." Yet he left a message that failed to include the names or addresses of the companies to which appellant had applied and therefore did not provide actual notice of his whereabouts that day. Appellant cited in his own testimony one phone message in which he specified the companies he was going to visit that day. One of his supervising agents testified that appellant needed to specify where he would be going during the day. We conclude that the decision to revoke appellant's CIP release was not a clear abuse of discretion.

Appellant argues that his CIP release was improperly revoked because any violation that he committed was neither intentional nor inexcusable. He appears to be relying on the second *Austin* factor, the required finding that a probation violation was intentional or inexcusable. *See Austin*, 295 N.W.2d at 250. But we agree with the district court's conclusion that the *Austin* factors do not apply to CIP-revocation proceedings.

The CIP statute allows "severe and meaningful sanctions for violating the conditions of the program." Minn. Stat. § 244.171, subd. 4 (Supp. 2007). This language suggests that there is no policy favoring the offender's continuation in CIP, in contrast to the policy favoring an offender's remaining on probation. *See Austin*, 295 N.W.2d at 250 (referring to "policies favoring probation"). But the circumstances of an offender on supervised release and one who is in CIP are "not analogous." *Hines v. Fabian*, 764 N.W.2d 849, 854 (Minn. App. 2009), *pet. for rev. filed* (Minn. June 4, 2009). Moreover, CIP gives the offender only the "possibility of an accelerated supervised-release date." *Id.*

Appellant presents no argument or citation to legal authority indicating that a violation of the CIP conditions of release must be "intentional or inexcusable" in order to justify revocation. We conclude that the nature of CIP release is sufficiently distinct from release on probation that the second *Austin* requirement does not apply.

Finally, appellant does not brief the procedural due process issue on appeal. *See State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (holding that claim of error that is not argued in appellate brief is deemed waived), *review denied* (Minn. Aug. 5, 1997). In any event, a prisoner does not have a protected liberty interest in remaining in CIP and is not entitled to procedural due process before being terminated from it. *See Hines*, 764 N.W.2d at 856.

Because the district court's findings are amply supported by the record and appellant's legal arguments are without merit, the district court's order must be affirmed.

Affirmed.