STATE OF MINNESOTA
IN COURT OF APPEALS
A10-0597, A10-598

Frank Edward Johnson, petitioner,
Appellant,

vs.

Bruce Neisen, Warden, et al.,
Respondents.

Filed July 13, 2010
Affirmed
Toussaint, Chief Judge

Chisago County District Court
File No. 13-CV-10-85

Frank Edward Johnson, Rush City, Minnesota (pro se appellant)

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

Considered and decided by Toussaint, Chief Judge; Klaphake, Judge; and Hudson, Judge.

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

TOUSSAINT, Chief Judge

Appellant Frank Edward Johnson seeks review of the district court's orders denying his third and fourth petitions for writs of habeas corpus, which challenge

decisions by the Minnesota Department of Corrections (DOC) to revoke his supervised release and to impose additional time for the violation and for failure to complete chemical dependency programming as ordered. This court granted appellant's request for expedited consideration and consolidated these appeals. We affirm.

D E C I S I O N

In a series of four habeas petitions, appellant continues to challenge the actions of Wisconsin authorities and the DOC in detaining him after he violated the conditions of his supervised release in November 2008, the March 2009 revocation of his supervised release, and the imposition of a requirement that he complete chemical dependency programming. On July 31, 2009, the district court denied appellant's first habeas petition; appellant's attempt to file an appeal from this July 31, 2009 order has been unsuccessful. *See Johnson v. Fabian*, No. A10-95 (Minn. App. Jan. 20, 2010) (dismissing appeal by order); *Johnson v. Fabian*, No. A10-95 (Minn. App. Feb. 10, 2010) (denying motion to reinstate appeal by order because appellant failed to identify appealable order, pay filing fee, or obtain order granting IFP status).

In October 2009, appellant filed his third habeas petition.[1] In January 2010, he filed his fourth habeas petition. These consolidated appeals are from the district court's denials of appellant's third and fourth petitions for habeas relief.

The district court's findings to support its ruling on a petition for habeas corpus are entitled to great weight and will be upheld if reasonably supported by the evidence.

[1] Appellant filed a second habeas petition in September 2009, which was denied by the district court on December 21, 2009. A separate appeal, A10-231, is currently pending before this court from that December 21, 2009 order.

Northwest v. LaFleur, 583 N.W.2d 589, 591 (Minn. App. 1998), *review denied* (Minn. Nov. 17, 1998). Here, the district court determined that appellant is "re-litigating many of the same issues" already addressed in prior district court orders and that under the doctrine of res judicata the court would not re-address those issues.

Appellant argues that res judicata does not apply to habeas corpus proceedings. As support for his position, he cites federal cases, including *Sanders v. United States*, 373 U.S. 1, 83 S. Ct. 1068 (1963). But Minnesota statutes provide a right of appeal in habeas proceedings, and Minnesota courts have applied res judicata in these types of proceedings. *See Thompson v. Wood*, 272 N.W.2d 357, 358 (Minn. 1978) (affirming denial of habeas petition on res judicata grounds, when petitioner sought to relitigate issues previously decided against him, he failed to file timely appeal from previous order, and current petition was merely attempt to cure that procedural defect); *State, ex rel. DuFault v. Utecht*, 220 Minn. 431, 456, 19 N.W.2d 706, 717 (1945) (holding that doctrine of res judicata applies to writs of habeas corpus).

Res judicata is proper when (1) there was a final decision on the merits in a prior case; (2) the two cases involved identical parties; (3) the estopped party had a full and fair opportunity to litigate the matter; and (4) the earlier claim involved the same set of factual circumstances. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004). The purpose of res judicata is to avoid piecemeal litigation and successive actions involving the same set of factual circumstances. *See Hauser v. Mealey*, 263 N.W.2d 803, 807 (Minn. 1978) (stating that "plaintiff may not split his cause of action and bring successive suits involving the same set of factual circumstances").

Appellant requests that this court examine the documents submitted in connection with his first habeas petition, including e-mails from Wisconsin agents to Minnesota that "prove" Minnesota authorities "purposely delayed retaking [him] back to Minnesota." He further claims that these e-mails "disprove a key part of the Commissioner of Corrections ruling at the HRU hearings that appellant was 'unamenable to supervision and a risk to the public', when Wisconsin was willing to supervise [him]." He admits that he "has been fighting these issues since November 5, 2008."

These statements by appellant make it clear that he continues to challenge the decision to detain him in November 2008 for violating the terms of his release and the actions of authorities in Wisconsin and Minnesota leading up to the revocation of his supervised release in March 2009. These claims were raised in appellant's first habeas petition and were addressed in the district court's July 31, 2009 order. The district court here did not clearly err in declining to address some of appellant's claims under the doctrine of res judicata.

The district court also recognized that appellant's challenges to the assignment of additional accountability time and to the requirement that he complete chemical dependency programming were not specifically addressed in the July 31, 2009 order. As such, the district court addressed these claims:

> The amount of accountability/additional prison time assigned to [appellant] was also proper. "If an inmate violates the conditions of the inmate's supervised release imposed by the commissioner, the commissioner may . . . (2) revoke the inmate's supervised release and reimprison the inmate for the appropriate period of time." Minn. Stat. § 244.05, subd. 3.
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> . . . .

> In the case herein, the time of imprisonment assigned to [appellant] was based upon the Hearing Officer's finding that [appellant] would pose a risk to the public. In the March 2, 2009 revocation hearing report the hearing officer found that [appellant] "presents a risk to the safety of the public." [Appellant's] argument that the [DOC] committed error when [appellant] was assigned an additional 365 days of reincarceration on June 8, 2009 is also without merit. [Appellant] failed to complete [chemical dependency] programming during his reincarceration, as required to do so, and therefore was assigned additional accountability time.

The DOC has broad authority to determine reasonable conditions and rules for the discipline of inmates. *See* Minn. R. 2940.3800 (2009). The DOC may require an inmate to undergo treatment and may discipline an inmate who refuses to do so. *See State ex rel. Morrow v. LaFleur*, 590 N.W.2d 787, 795-96 (Minn. 1999). Imposing disciplinary time on an inmate who fails to complete treatment or who violates conditions of release is rationally related to society's interest in insuring that offenders do not commit new offenses when released and to public safety concerns. *See id.*

The DOC's assignment of additional time to appellant was a proper imposition of disciplinary sanctions, which this court reviews for a clear abuse of discretion. *See State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 27 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006). We find no abuse of discretion here.

Affirmed.