STATE OF MINNESOTA
IN COURT OF APPEALS
A10-284

Malcolm McLaughlin,
Appellant,

vs.

State of Minnesota,
Respondent,

Washington County Attorney,
Respondent

Filed August 10, 2010
Affirmed
Wright, Judge

Washington County District Court
File No. 82-CV-09-5380

Malcolm McLaughlin, Brooklyn Park, Minnesota (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Douglas Johnson, Washington County Attorney, Sarah E. Kerrigan, Assistant County Attorney, Stillwater, Minnesota (for respondents)

Considered and decided by Ross, Presiding Judge; Kalitowski, Judge; and Wright, Judge.

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

WRIGHT, Judge

Appellant challenges the district court's denial of his petition for a writ of habeas corpus. Appellant argues that he is entitled to habeas corpus relief because the lifetime conditional-release term imposed by the district court violates the Ex Post Facto clauses of the United States and Minnesota constitutions. We affirm.

FACTS

In September 2006, appellant Malcolm McLaughlin pleaded guilty to fourth-degree criminal sexual conduct, a violation of Minn. Stat. § 609.345, subds. 1(d), 2 (2004 & Supp. 2005). The district court sentenced McLaughlin to 27 months' imprisonment, which was a downward durational departure from a presumptive sentence of 39 months' imprisonment. Because McLaughlin previously had been convicted of second-degree criminal sexual conduct, a lifetime conditional-release term was imposed pursuant to Minn. Stat. § 609.3455, subd. 7 (Supp. 2005). McLaughlin served his term of imprisonment and was released. But he remained subject to the lifetime conditional-release term.

On August 11, 2009, McLaughlin petitioned for a writ of habeas corpus, arguing that (1) the duration of the sentence imposed was based on an incorrect criminal-history score and (2) imposition of lifetime conditional release was contrary to law. The district court denied the writ, concluding that, because McLaughlin was not incarcerated at the time of his petition, it was not ripe for review. This appeal followed.

D E C I S I O N

As an initial matter, we consider McLaughlin's argument that the district court erred by denying his petition without an evidentiary hearing. A habeas corpus hearing need not be held when the petitioner does not allege sufficient facts to constitute a prima facie case for relief. *Sanders v. State*, 400 N.W.2d 175, 176 (Minn. App. 1987), *review denied* (Minn. Apr. 17, 1987). Moreover, a habeas corpus petitioner is entitled to an evidentiary hearing only if the petition demonstrates a factual dispute. *Seifert v. Erickson*, 420 N.W.2d 917, 920 (Minn. App. 1988), *review denied* (Minn. May 18, 1988). When considering the merits of a habeas corpus petition, the district court "may examine the official files and records of the court issuing the warrant of commitment," and may "take judicial notice of official records or transcripts to determine the sufficiency of the petition or the propriety of issuing the writ of habeas corpus." Minn. Stat. § 589.04(f) (2008).

The district court found that the petition "is fully reviewable based on the documents and written arguments in the record, such that Petitioner is not entitled to an Evidentiary Hearing." This finding is supported by the record, as McLaughlin's petition does not demonstrate a factual dispute.

McLaughlin argues that habeas corpus relief was erroneously denied. We 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). But we review questions of law de novo. *State ex rel.*

Guth v. Fabian, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

A writ of habeas corpus is a statutory civil remedy available "to obtain relief from [unlawful] imprisonment or restraint." Minn. Stat. § 589.01 (2008). A writ of habeas corpus is not available to "persons committed or detained by virtue of the final judgment of a competent tribunal of civil or criminal jurisdiction." *Id.* The petitioner shoulders the burden to demonstrate the illegality of the detention. *Case v. Pung*, 413 N.W.2d 261, 262 (Minn. App. 1987), *review denied* (Minn. Nov. 24, 1987).

The scope of habeas corpus relief is limited; it may not be used to address issues previously raised, as a substitute for appeal, or to collaterally attack a commitment. *Joelson v. O'Keefe*, 594 N.W.2d 905, 908 (Minn. App. 1999), *review denied* (Minn. July 28, 1999); *see also Breeding v. Swenson*, 240 Minn. 93, 96, 60 N.W.2d 4, 7 (1953) (holding that habeas corpus "is a civil remedy, separate and apart from the criminal action, and, therefore, it may not be used as a substitute for a writ of error or appeal; as a motion to correct, amend, or vacate; or as a cover for a collateral attack upon a judgment of a competent tribunal which had jurisdiction"). When direct appeal and postconviction remedies are available to raise claims, a habeas corpus petition is properly dismissed. *Kelsey v. State*, 283 N.W.2d 892, 893-94 (Minn. 1979); *see also State ex rel. Butler v. Swenson*, 243 Minn. 24, 29, 66 N.W.2d 1, 4 (1954) ("Questions which should be determined at the trial or in a motion for a new trial or reviewed through some other regular legal procedure have no place in a habeas corpus proceeding."). "Because the sentence is a judgment, the rules applicable to collateral attack on a judgment apply

where a collateral attack is made on a sentence." *State ex rel. Holm v. Tahash*, 272 Minn. 466, 469, 139 N.W.2d 161, 163 (1965) (quotation omitted).

The district court denied McLaughlin's habeas corpus petition because it found that McLaughlin was not incarcerated at the time of his petition. Although we affirm the dismissal of McLaughlin's habeas corpus petition, we do so for reasons other than those of the district court. Under certain circumstances not present here, habeas corpus relief may be available to a petitioner who is not incarcerated but is subject to a conditional-release term. *See State ex rel. Atkinson v. Tahash*, 274 Minn. 65, 71, 142 N.W.2d 294, 298-99 (1966) ("[A] state prisoner, released from a state institution and in custody of the Adult Corrections Commission under conditions imposed by that body and subject to revocation, is entitled to the remedy of habeas corpus as used under the practice in this state as a postconviction remedy."); *see also* Minn. Stat. § 589.01 (stating that habeas corpus relief is available to person who is "imprisoned *or otherwise restrained of liberty*" (emphasis added)); *Jones v. Cunningham*, 371 U.S. 236, 243, 83 S. Ct. 373, 377 (1963) (stating that although "petitioner's parole releases him from immediate physical imprisonment, it imposes conditions which significantly confine and restrain his freedom," which "is enough to keep him in the 'custody' of [the state parole board]" for the purpose of a writ of habeas corpus).

McLaughlin seeks correction of his sentence, arguing that the statutory imposition of a lifetime conditional-release term violates the Ex Post Facto clauses of the United

States and Minnesota constitutions.[1] *See* U.S. Const. art. I, § 9; Minn. Const. art. I, § 11. But habeas corpus relief is not available as a substitute for a motion to correct, amend, or vacate a sentence. *See O'Keefe*, 594 N.W.2d at 908; *see also Butler*, 243 Minn. at 29, 66 N.W.2d at 4 ("Questions which should be determined at the trial or in a motion for a new trial or reviewed through some other regular legal procedure have no place in a habeas corpus proceeding.") Here, McLaughlin could seek sentence correction under Minn. R. Crim. P. 27.03, subd. 9, which permits a district court "at any time" to correct a sentence that is not authorized by law. *See State v. Purdy*, 589 N.W.2d 496, 498 (Minn. App. 1999) (quoting rule 27.03). In addition, statutory postconviction relief is available when a person convicted of a crime claims that the sentence is in violation of the constitutional rights or the laws of the United States or Minnesota. Minn. Stat. § 590.01, subd. 1(1) (2008). McLaughlin's ex post facto argument represents precisely the kind of constitutional claim that section 590.01, subdivision 1(1), is meant to address. Although McLaughlin contends that postconviction relief is unavailable because the deadline for seeking such relief has passed, there are exceptions to the time limit that the district court may determine apply here. *See, e.g.*, *id.*, subd. 4(b)(5) (2008) (exception to deadline when "the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice"). Because McLaughlin has alternative forms

[1] In his appellate brief, McLaughlin argues that the district court relied on an incorrect criminal-history score, resulting in an erroneous sentence. But in his reply brief, McLaughlin concedes this issue because he failed to identify an error, apparent on the face of the record, that would make his sentence void. *See Shaw v. Utecht*, 232 Minn. 82, 86-87, 43 N.W.2d 781, 784-85 (1950) (stating that habeas corpus "is not a corrective remedy" and cannot be invoked in correcting nonjurisdictional errors).

of relief available to him and because habeas corpus relief is limited to circumstances in which the petitioner has no other recourse, dismissal of McLaughlin's petition for habeas corpus relief was proper.[2]

Affirmed.

[2] Even if other forms of relief were unavailable to him, McLaughlin would not be entitled to a writ of habeas corpus because he has failed to establish that his sentence, which is the basis for the restraint that he challenges, is unlawful. *See Case*, 413 N.W.2d at 262 ("The burden is on the petitioner to show the illegality of his detention."). The lifetime conditional-release term imposed under Minn. Stat. § 609.3455, subd. 7, does not violate the Ex Post Facto clauses of the United States and Minnesota constitutions because it enhances a sentence imposed for an offense McLaughlin committed after Minn. Stat. § 609.3455, subd. 7, became effective in 2005. *See State v. Willis*, 332 N.W.2d 180, 185 (Minn. 1983) ("The use of prior convictions to increase punishment for an underlying substantive offense committed after the effective date of a statute providing for increased penalties does not violate the ex post facto provisions of either the state or federal constitutions.").