STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1579

Joseph Anthony Favors, petitioner,
Appellant,

vs.

Lucinda Jesson,
Respondent.

Filed March 17, 2014
Affirmed
Schellhas, Judge

Carlton County District Court
File No. 09-CV-13-680

Joseph Anthony Favors, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Ricardo Figueroa, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Schellhas, Judge; and Toussaint, Judge.*

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

SCHELLHAS, Judge

Appellant, who is civilly committed, challenges the district court's denial of his petition for a writ of habeas corpus. We affirm.

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

FACTS

The district court initially committed appellant Joseph Favors as a sexually dangerous person (SDP) and sexual psychopathic personality (SPP) to the Minnesota Sex Offender Program (MSOP) in March 2009. The court indeterminately committed him as an SDP and SPP in November 2009. This court affirmed Favors's commitment. *In re Civil Commitment of Favors*, No. A09-2306, 2010 WL 2486349, at *1 (Minn. App. June 22, 2010), *review denied* (Minn. Aug. 24, 2010).

In March 2013, Favors petitioned for a writ of habeas corpus on the grounds that (1) the evidence was insufficient to prove that he is an SDP and SPP; (2) the judge who presided over his civil-commitment trial was biased; (3) three statutory violations violated his due-process right; (4) his counsel was ineffective; (5) the district court denied him his right to represent himself; and (6) the prosecutor selectively prosecuted him. Favors asked the district court to order that "he be released from his unconstitutional imprisonment or the judgment be modified to a less restrictive alternative program by vacating the commitment order." The court denied the petition without a hearing.

This appeal follows.

D E C I S I O N

A writ of habeas corpus is an "extraordinary remedy," *State ex rel. Rajala v. Rigg*, 257 Minn. 372, 381, 101 N.W.2d 608, 614 (1960) (quotation omitted), for which persons, including civilly committed persons, may apply "to obtain relief from imprisonment or restraint," Minn. Stat. § 589.01 (2012). *See* Minn. Stat. § 253B.23, subd. 5 (2012) ("Nothing in this chapter shall be construed to abridge the right of any person to the writ

of habeas corpus."). A petitioner for habeas corpus "bears the burden of proof of showing the illegality of his detention." *Breeding v. Swenson*, 240 Minn. 93, 93, 60 N.W.2d 4, 5 (1953).

Appellate courts review a habeas-corpus petition "the same as in any civil action," deferring to factual findings supported by "reasonable evidence." *State ex rel. Campbell v. Tahash*, 261 Minn. 252, 259, 112 N.W.2d 37, 41 (1961). We may affirm a petition's denial when "the petition, on its face, [fails to] present[] a case for issuing a writ of habeas corpus." *State ex rel. Nelson v. Rigg*, 259 Minn. 375, 375, 107 N.W.2d 378, 379 (1961). "An evidentiary hearing is not required upon a petition for relief instituted . . . in a habeas proceeding . . . unless the petition alleges facts which, if proved, would entitle petitioner to relief." *State ex rel. Roy v. Tahash*, 277 Minn. 238, 239, 152 N.W.2d 301, 302 (1967).

In its order denying Favors's petition, the district court reasoned that "habeas proceedings cannot be used as a substitute for appeal" and that the district court was "limited to considering jurisdictional and constitutional challenges." Favors argues that the court erred by denying his petition without a hearing. We conclude that the district court did not err because Favors's petition, on its face, failed to present a case for issuing a writ of habeas corpus.

"'[T]he scope of [a habeas-corpus] inquiry is limited.'" *Beaulieu v. Minn. Dep't of Human Servs.*, 798 N.W.2d 542, 546 (Minn. App. 2011) (quoting *State ex rel. Anderson v. U.S. Veterans Hosp.*, 268 Minn. 213, 217, 128 N.W.2d 710, 714 (1964)), *aff'd on other grounds*, 825 N.W.2d 716 (Minn. 2013). A habeas-corpus petition is unavailable to

persons "committed or detained by virtue of the final judgment of a competent tribunal of civil or criminal jurisdiction." Minn. Stat. § 589.01. "[W]here the right to due process of law is left unimpaired," "[t]he denial of certain constitutional rights . . . is not fatal to the jurisdiction of the court, and the error resulting from such denial is to be corrected through appeal and not by resorting to the extraordinary remedy of habeas corpus." *Rajala*, 257 Minn. at 381, 101 N.W.2d at 614 (emphasis omitted) (quotation omitted); *see also Beaulieu*, 798 N.W.2d at 551 (requiring petitioner to "allege a lack of jurisdiction or a constitutional violation"). The petition "may not be used as a substitute for an appeal," *State ex rel. Shannon v. Tahash*, 265 Minn. 66, 69, 121 N.W.2d 59, 61 (1963), even if the petitioner "permitted the time for appeal to elapse," *State ex rel. Shelby v. Rigg*, 255 Minn. 356, 357, 96 N.W.2d 886, 889 (1959). A district court properly denies the petition when the petitioner could have raised the underlying claims through other legal means. *See Kelsey v. State*, 283 N.W.2d 892, 893–94 (Minn. 1979) (disapproving of "attempt . . . to use habeas corpus as a means of obtaining review of trial errors," reasoning that "[d]irect appeal and the postconviction remedy . . . are available for that purpose" and, therefore, "the need for another means of raising the claim of trial error is . . . not apparent"); *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.").

Most of Favors's arguments in his initial 150-page memorandum in support of his habeas-corpus petition are insufficiency-of-the-evidence arguments regarding the

commitment court's determination the he is an SDP or SPP. On appeal, Favors re-characterizes his argument from an insufficiency-of-the-evidence argument to an argument that the evidence was "illegal." But Favors appears to use the term "illegal" as a substitute for "inadmissible." "Reception of inadmissible evidence does not render a judgment subject to collateral attack in a habeas corpus proceeding." *State ex rel. Farrington v. Tahash*, 263 Minn. 165, 165, 115 N.W.2d 921, 922 (1962). "The sufficiency of evidence to establish the guilt of relator can only be raised by an appeal or writ of error." *State v. Wiley*, 260 Minn. 88, 88, 108 N.W.2d 774, 775 (1961).

In his petition, Favors claims that the commitment judge was biased against him on the grounds that the judge (1) mistakenly believed that Favors committed sexual misconduct while on parole; (2) accepted and failed to critically examine false testimony; (3) overruled or ignored at least one evidentiary objection made by Favors; (4) was employed by Dakota County and, consequently, a co-employee with the prosecutor and the person who petitioned to civilly commit Favors; and (5) declined to permit Favors to "dismiss his attorney," stating that the attorney was "'one of the best attorneys in the state.'" On appeal, Favors refers to that bias argument, but Favors did not raise the bias issue to the district court at his trial. *See Braith v. Fischer*, 632 N.W.2d 716, 724–25 (Minn. App. 2001) (declining to address bias issue "not presented to the district court") (citing *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)), *review denied* (Minn. Oct. 24, 2001); *see also Washington v. State*, 675 N.W.2d 628, 631 (Minn. 2004) (noting that, "[g]iven appellant's basis for alleging judicial bias, it is clear that he knew of the issue prior to direct appeal"); *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."). And "[p]revious adverse rulings by themselves do not demonstrate judicial bias." *Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008).

Favors claimed in his petition that his civil-commitment prepetition screening process was plagued by three statutory violations that violated his right to due process: (1) no one interviewed him before petitioning to civilly commit him; (2) *one* person, instead of a *team* of people, performed the prepetition investigation; and (3) due to a conflict of interest, the petitioner effectively was a part of the screening team. *See* Minn. Stat. § 253B.07, subd. 1(a)(1) (2012) (requiring (1) prepetition investigation including "a personal interview with the proposed patient," (2) "[t]he designated agency . . . [to] appoint a screening team to conduct an investigation," and (3) "[t]he petitioner . . . [to] not be a member of the screening team"). Although Favors refers to those arguments on appeal, he fails to show how the alleged statutory violations deprived him of his life, liberty, or property. *See Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012) (stating that first step in procedural-due process analysis is determining "whether the government has deprived the individual of a protected life, liberty, or property interest"). We reject Favors's statutory-violation arguments recasted as due-process arguments when he, at most, vaguely developed his due-process claims in his petition and on appeal. Because the substance of Favors's arguments are based only on statute, they are beyond the scope of his petition. *See Beaulieu*, 798 N.W.2d at 548 ("[T]he supreme court has not held that habeas relief may be obtained based on a violation of a statute.").

Favors claimed in his petition that his counsel at the civil-commitment trial was ineffective. On appeal, he relies on federal jurisprudence for the proposition that "[t]he proper method to challenge the effectiveness of counsel at trial and on appeal is in a petition for writ of habeas corpus." *United States v. Espino*, 317 F.3d 788, 799 (8th Cir. 2003). But the right to counsel in civil-commitment proceedings is *statutory*. *See* Minn. Stat. § 253B.07, subd. 2c (2012) ("A patient has the right to be represented by counsel at any proceeding under this chapter."); *Beaulieu*, 798 N.W.2d at 543, 551 (holding that "[t]he Due Process Clause of the Fourteenth Amendment to the United States Constitution does not confer a right to counsel on a person who is the subject of a civil-commitment proceeding" and concluding that "Beaulieu's right to counsel in his civil-commitment proceeding was based solely on a statute"). In Minnesota, "[a] person who is civilly committed may not petition for a writ of habeas corpus on the ground that he was denied *a statutory right to counsel in a civil-commitment proceeding*." *Beaulieu*, 798 N.W.2d at 543 (emphasis added). *But see generally Beaulieu v. Minn. Dep't of Human Servs.*, 825 N.W.2d 716, 721 n.7 (Minn. 2013) ("Minn. R. Civ. P. 60.02 provides a mechanism by which an indeterminately civilly committed individual can raise ineffective-assistance-of-counsel claims.").

Favors claimed in his petition that the district court denied him his right to represent himself during his civil-commitment trial and refers to that argument on appeal. "The right to self-representation in state *criminal* trials is guaranteed by the Sixth and Fourteenth Amendments of the U.S. Constitution." *State v. Blom*, 682 N.W.2d 578, 613 (Minn. 2004) (emphasis added); *see Faretta v. California*, 422 U.S. 806, 821, 95 S. Ct.

2525, 2534 (1975) (stating that "[t]he Sixth Amendment . . . implies a right of self-representation"). But Favors cites no authority, nor could we find any, indicating that the federal self-representation right applies to *civil*-commitment trials in Minnesota. *Cf. Martinez v. Court of Appeal of California, Fourth Appellate Dist.*, 528 U.S. 152, 160, 120 S. Ct. 684, 690 (2000) (noting that Sixth Amendment self-representation right does not extend even to *criminal* appeals). Favors also makes no argument as to why we should apply the federal self-representation right more broadly than the United States Supreme Court and Minnesota Supreme Court have applied it. We decline to do so.

Favors claimed in his petition that the prosecutor selectively prosecuted him and refers to that argument on appeal. He relies on *Wayte v. United States*, in which the Supreme Court noted that "[s]electivity in the enforcement of *criminal* laws is subject to constitutional constraints" and "the decision to prosecute may not be deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification." 470 U.S. 598, 608, 105 S. Ct. 1524, 1531 (1985) (emphasis added) (quotations omitted). But Favors cites no authority, nor could we find any, extending that *criminal* rule to *civil*-commitment proceedings. He also makes no argument as to why we should do so. We decline to apply the selective-prosecution rule to civil-commitment proceedings.

Favors argues that the district court erred by civilly committing him based on antisocial personality disorder, which Favors alleges is untreatable and from which he alleges he is in remission, and paraphilia sexual dysfunction, from which he alleges he no longer suffers. To the extent that Favors is challenging the evidence's sufficiency, his challenge is beyond the scope of his habeas-corpus petition. *See Wiley*, 260 Minn. at 88,

108 N.W.2d at 775 ("The sufficiency of evidence to establish the guilt of relator can only be raised by an appeal or writ of error."). And to the extent that Favors predicates his argument on his right to due process, his challenge is not properly before us because he did not raise this issue in his habeas-corpus petition or memoranda. *See Thiele*, 425 N.W.2d at 582 ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." (quotation omitted)).

We conclude that the district court did not err by denying Favors's habeas-corpus petition without a hearing.

Affirmed.