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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1225**

Jacquet Deon Munn, petitioner,
Appellant,

vs.

Tom Roy, et al.,
Respondents.

**Filed March 13, 2017
Affirmed
Reyes, Judge**

Washington County District Court
File No. 82-CV-16-1739

Jacquet Deon Munn, Bayport, Minnesota (pro se appellant)

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

Considered and decided by T. Smith, Presiding Judge; Johnson, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant challenges the district court's order denying his petition for a writ of habeas corpus and dismissing his claims without a hearing. He argues that the Department of Corrections (DOC) violated his Fifth and Fourteenth Amendment rights when it imposed extended incarceration as a disciplinary penalty for appellant's refusal to

participate in sex-offender treatment. Because we conclude that appellant's rights were not violated, we affirm.

FACTS

In December 2010, appellant Jacquet Munn pleaded guilty to third-degree criminal sexual conduct and possession of a firearm by a prohibited person. Appellant filed a direct appeal of his sentence to this court, and we reversed and remanded for resentencing. *State v. Munn*, No. A11-852, 2012 WL 2077264, at *1 (Minn. App. June 11, 2012). On remand, appellant sought to withdraw his guilty plea. The district court denied appellant's motion to withdraw his guilty plea and resentedenced him, and appellant challenged that decision. *State v. Munn*, No. A13-1067, 2014 WL 1516480, at *2 (Minn. App. Apr. 21, 2014), *review denied* (Minn. July 15, 2014). On his second appeal, this court affirmed the denial of appellant's guilty-plea-withdrawal motion. *Id.* at *1.

Appellant was committed to the custody of the commissioner of corrections and placed at the Minnesota Correctional Facility in Stillwater. In May 2013, DOC staff determined that appellant should complete sex-offender treatment. DOC staff interviewed appellant on June 24, 2015, to assess his willingness to participate in treatment. Appellant refused sex-offender treatment, claiming that he was awaiting the outcome of an active appeal. The next day, DOC staff issued appellant a notice of violation of a discipline rule for his refusal. A disciplinary hearing was held on June 30, 2015, after which appellant received 360 days of extended incarceration. The hearing officer noted that appellant did not have a direct appeal pending at the time that DOC staff interviewed him.

Appellant exhausted the DOC's discipline-appeal process, with the warden affirming the decision to deny the administrative appeal because appellant did not have an active direct appeal at the time of the interview. Appellant then filed a petition for a writ of habeas corpus, alleging that the DOC violated his Fifth and Fourteenth Amendment rights when it imposed extended incarceration. The district court dismissed appellant's petition with prejudice. This appeal follows.

DECISION

Appellant argues that the district court erred in denying his petition for a writ of habeas corpus because the DOC violated his Fifth and Fourteenth Amendment rights when it extended his incarceration as a result of his disciplinary violation.¹ We disagree.

The state constitution guarantees the privilege of filing a petition for a writ of habeas corpus. Minn. Const. art. I, § 7. The legislature codified this privilege, extending the right to file a petition for a writ of habeas corpus to individuals who are "imprisoned or otherwise restrained of liberty." Minn. Stat. § 589.01 (2014). The petitioner bears the burden of showing the illegality of his detention. *Case v. Pung*, 413 N.W.2d 261, 262 (Minn. App. 1987), *review denied* (Minn. Nov. 24, 1987). "The district court's findings

¹ Appellant also argues, for the first time on appeal, that the DOC violated *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), because it withheld evidence relating to a transfer block that prevented appellant from transferring to a medium-security correctional facility for MSOP. This was not appellant's reason for refusing to participate in sex-offender treatment. In addition, *Brady* may not apply because appellant no longer has the same Fourth Amendment privileges as a preconviction defendant. *Boles v. Chavis*, 454 U.S. 907, 909-10 (1981) (Rehnquist, J., dissenting). Moreover, appellant did not make this argument to the district court; thus, we need not consider it. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

in support of a denial of a petition for a writ of habeas corpus are entitled to great weight and will be upheld if reasonably supported by the evidence.” *Aziz v. Fabian*, 791 N.W.2d 567, 569 (Minn. App. 2010). This court, nonetheless, reviews questions of law de novo. *Id.*

I. Appellant’s Fifth Amendment right was not violated.

The Fifth Amendment provides that no person “shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V; *see also* Minn. Const. art. I, § 7. “In order for the privilege to apply, two distinct elements must be present—compulsion and incrimination.” *Johnson v. Fabian*, 735 N.W.2d 295, 299 (Minn. 2007). In Minnesota, imposing an extension of an inmate’s incarceration for his refusal to participate in a sex-offender-treatment program is compulsion under the Fifth Amendment privilege against self-incrimination. *Id.* at 309. Thus, compulsion was present when appellant refused sex-offender treatment.

The incrimination element is present when a convicted individual has a direct appeal of that conviction pending or when “the time for direct appeal of that conviction has not expired.” *Id.* at 310. “[O]nce a direct appeal has concluded and the risk of a perjury prosecution is absent or has expired, an offender no longer enjoys the Fifth Amendment privilege to refuse to participate in sex-offender treatment.” *Roth v. Comm’r of Corrections*, 759 N.W.2d 224, 229 (Minn. App. 2008).

When DOC staff interviewed appellant for entry into MSOP on June 24, 2015, he did not have a direct appeal pending. This court affirmed the district court’s denial of appellant’s guilty-plea-withdrawal motion on April 21, 2014. The Minnesota Supreme

Court denied review on July 15, 2014, and appellant did not file a petition for a writ of certiorari with the United States Supreme Court within 90 days.

Further, at the time of the interview, appellant did not face a risk of perjury prosecution for two reasons. First, appellant pleaded guilty to his crimes in December 2010. *Bedell v. Roy*, 853 N.W.2d 827, 830 (Minn. App. 2014) (“Once the appeal is exhausted, the privilege applies only if the inmate testified at trial and denied that a crime occurred because the inmate would have a ‘real’ fear of a perjury prosecution.”) (citing *Johnson*, 735 N.W.2d at 311)). Second, DOC staff interviewed appellant for MSOP in June 2015, which is almost five years after he pleaded guilty, well past the three-year statute of limitations for perjury. Minn. Stat. § 628.26(k) (2014). Therefore, appellant cannot establish that the DOC violated his Fifth Amendment right against self-incrimination because he cannot establish the incrimination element.

II. Appellant’s Fourteenth Amendment right was not violated.

Under the Due Process Clause of the United States Constitution, an inmate “has a protected liberty interest in his supervised release date that triggers a right to procedural due process before that date can be extended.” *Carrillo v. Fabian*, 701 N.W.2d 763, 773 (Minn. 2005). The United State Supreme Court has held that due process requires that an inmate be afforded: (1) “[a]t least a brief period of time after the notice, no less than 24 hours, . . . to prepare for the appearance,” (2) “a written statement by the factfinders as to the evidence relied on and reasons for the disciplinary action,” and (3) the ability “to call witnesses and present documentary evidence in his defense when permitting him to do so

will not be unduly hazardous to institutional safety or correctional goals.” *Wolff v. McDonnell*, 418 U.S. 539, 564, 566, 94 S. Ct. 2963, 2979 (1974) (quotation omitted).

Here, the DOC served appellant with the notice of violation five days prior to the disciplinary hearing. A hearing officer presided over the hearing and provided a written statement of his findings and reasoning for the disciplinary action, including that appellant did not prevail in his direct appeal and that the postconviction court denied his postconviction petition.² The DOC also provided appellant with the opportunity to call witnesses and present documentary evidence. Appellant was afforded all the process due to him.

Affirmed.

² In January 2015, appellant petitioned for postconviction relief and argued, in an amended petition, “that he was entitled to withdraw his guilty pleas on due-process grounds.” *Munn v. State*, No. A15-1222, 2016 WL 1396963, at *1-2 (Minn. App. Apr. 11, 2016), *review denied* (Minn. June 29, 2016). The postconviction court denied his request without a hearing on June 18, 2015. *Id.* at *2. Appellant filed a notice of appeal of the postconviction court’s decision on July 24, 2015. This court affirmed the postconviction court’s decision, and the supreme court denied appellant’s petition for review. *Munn v. State*, 2016 WL 1396963.