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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1584**

Dennis D. Linehan, petitioner,
Appellant,

vs.

Emily Johnson Piper, Commissioner of Department of Human Services,
Respondent.

**Filed April 3, 2017
Affirmed
Bjorkman, Judge**

Carlton County District Court
File No. 09-CV-16-1140

Dennis D. Linehan, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, William Young, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Johnson, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the denial of his petition for a writ of habeas corpus, arguing
that his civil commitment violates his constitutional and statutory rights. We affirm.

FACTS

Appellant Dennis D. Linehan has been civilly committed as a sexually dangerous person (SDP) to the Minnesota Sex Offender Program (MSOP) since 1995. He has a lengthy history of sex-related offenses. On June 10, 1965, Linehan kidnapped and killed a 14-year-old girl while attempting to sexually assault her. Linehan was imprisoned after pleading guilty to kidnapping. Linehan escaped from prison ten years later and sexually assaulted a 12-year-old girl in Michigan. After serving time for the offense in Michigan, he returned to prison in Minnesota.

In 1999, the Minnesota Supreme Court affirmed Linehan's civil commitment after rejecting his arguments that the civil-commitment statute deprived him of his due-process rights and violated the constitutional bans on double jeopardy and ex post facto laws. *In re Linehan*, 594 N.W.2d 867, 869 (Minn. 1999) (*Linehan I*). Linehan has since sought habeas relief in both state and federal court, which was denied. *See Linehan v. Milczark*, 315 F.3d 920, 927-29 (8th Cir. 2003) (*Linehan II*); *Linehan v. Jesson*, No. A13-0891 (Minn. App. Dec. 6, 2013), *review denied* (Minn. Jan. 29, 2014) (*Linehan III*).¹

On July 1, 2016, Linehan filed the current petition for a writ of habeas corpus. His petition asserts that his confinement is unconstitutional because it violates due process,

¹ Linehan has also initiated actions seeking discharge from MSOP. In 2006, Linehan filed a petition with the MSOP special review board seeking discharge from his SDP commitment. Because MSOP's evaluation did not support either a provisional or full discharge, Linehan withdrew his petition. In 2010, Linehan moved the district court to vacate his commitment under Minn. R. Civ. P. 60.02(e)-(f). The district court denied the motion, and this court affirmed the denial. *In re Linehan*, No. A11-0958 (Minn. App. Nov. 14, 2011).

equal protection, and the separation-of-powers doctrine, and constitutes a bill of attainder. The district court denied the petition, concluding that several of Linehan's arguments had previously been rejected and others were not properly before the court because they allege statutory violations that are not subject to habeas relief. Linehan appeals.

D E C I S I O N

A writ of habeas corpus is a statutory civil remedy that provides “relief from imprisonment or restraint.” Minn. Stat. § 589.01 (2016). It is not available to “persons committed or detained by virtue of the final judgment of a competent tribunal of civil or criminal jurisdiction.” *Id.* To obtain habeas relief, a petitioner “must allege either a lack of jurisdiction or a violation of a constitutional right.” *Beaulieu v. Minn. Dep’t of Human Servs.*, 798 N.W.2d 542, 548 (Minn. App. 2011), *aff’d*, 825 N.W.2d 716 (Minn. 2013). Habeas may not be used to collaterally attack the underlying commitment or for review of issues previously raised on appeal. *Joelson v. O’Keefe*, 594 N.W.2d 905, 908 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). We review questions of law presented in a habeas petition de novo. *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006). “The constitutionality of a statute is a question of law.” *Rew v. Bergstrom*, 845 N.W.2d 764, 776 (Minn. 2014).

Linehan first contends the district court erred in concluding habeas relief is not available with respect to claims he has raised in other proceedings. This argument is unavailing. Appellate courts have already rejected Linehan's arguments that his civil commitment violates his due-process rights and the constitutional bans against double jeopardy, ex post facto laws, and bills of attainder. *See Linehan I*, 594 N.W.2d at 871-76

(rejecting the arguments that Linehan's civil commitment violated due process and the constitutional bans on double jeopardy and ex post facto laws); *Linehan III*, slip op. at 2-3 (rejecting the argument that the civil-commitment statute is an unconstitutional bill of attainder). Accordingly, he is not entitled to habeas relief based on these claims. *Joelson*, 594 N.W.2d at 908.

Linehan next argues that habeas relief is warranted because the civil-commitment statute violates the separation-of-powers doctrine. We disagree. His argument relies on alleged violations of statutory rights conferred on him by federal and state law. A habeas petition must allege jurisdictional or constitutional challenges; it cannot be based on claimed statutory violations. *Beaulieu*, 798 N.W.2d at 547-48, 551.

Finally, Linehan asserts that he should be discharged from civil commitment because he does not suffer from a serious mental illness or pose a substantial risk of danger and because MSOP is no longer providing treatment. But a habeas petition may not be used to collaterally attack an underlying commitment. *Joelson*, 594 N.W.2d at 908. Linehan's recourse for seeking discharge from his commitment is controlled by the civil-commitment statute. See Minn. Stat. §§ 253D.27-.36 (2016). In sum, the district court did not err in denying Linehan's petition for a writ of habeas corpus.

Affirmed.