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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1604**

State of Minnesota, ex rel.,
Arturo Martinez, petitioner,
Appellant,

vs.

Tom Roy,
Commissioner of Corrections,
Respondent.

**Filed May 15, 2017
Affirmed
Peterson, Judge**

Anoka County District Court
File No. 02-CV-16-2569

Cathryn Middlebrook, Chief Appellate Public Defender, Amy Lawler, Michael J. McLaughlin, Assistant Public Defenders, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, Rachel E. Bell, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Kirk, Presiding Judge; Peterson, Judge; and Kalitowski, Judge.*

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

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from an order denying a habeas corpus petition, appellant argues that the district court erred by dismissing his petition as moot and denying him credit against his conditional release time. We affirm.

FACTS

In 2012, appellant Arturo Martinez was adjudicated delinquent of second-degree criminal sexual conduct, an offense that he committed when he was age 17. The district court imposed a stayed extended juvenile jurisdiction sentence of 36 months in prison and 10 years of conditional release. This sentence was executed in 2014. Martinez was placed on supervised release on May 19, 2015, and was sent back to prison for 90 days for violation of his release terms on June 25, 2015. Following this action, Martinez was considered to be a level-II sex offender who required intensive supervised release (ISR).

After his 90 days of accountability time, the Hearings and Release Unit (the HRU) held a review hearing on September 21, 2015. Because his ISR release was contingent on “an agent-approved plan” and Martinez had been unable to find approved housing, the HRU continued his incarceration “for up to 90 days to accommodate release planning.” Martinez had submitted four housing proposals, and all of them had been rejected. Among the four, the Department of Corrections (DOC) halfway house in Mankato was rejected because a Mankato ordinance does not allow level-II offenders to be housed at that property. Martinez was advised that he could “be released as soon as an agent-approved release plan is secured.”

A second review hearing was held on December 14, 2015. Martinez and his supervising agents had reviewed several options, including the Mankato DOC house, but had been unable to find appropriate housing. Martinez's incarceration was extended another 90 days, and he was again advised that he would be released as soon as an approved plan was established. On March 7, 2016, another review hearing was held. Martinez's case manager presented seven housing options, none of which was immediately available. The HRU officer noted that Martinez's sentence-expiration date would be May 18, 2016, and continued his incarceration to that date. On May 11, 2016, Martinez's agent secured temporary housing at a motel in Mankato, using DOC rental-assistance funds. Martinez was released on ISR on May 18, 2016, and was placed on conditional release until March 29, 2026.

On May 16, 2016, Martinez's attorney filed a petition for a writ of habeas corpus, alleging that (1) he was being unlawfully held by the commissioner of corrections; (2) the commissioner was not authorized to hold "review hearings"; and (3) the Mankato ordinance prohibiting registered offenders from residing in the DOC halfway house was preempted by state statute. The district court dismissed the petition as moot and denied Martinez's request for credit against his conditional-release term for the time served in Lino Lakes during his supervised-release term. This appeal followed.

D E C I S I O N

"A person imprisoned or otherwise restrained of liberty . . . may apply for a writ of habeas corpus to obtain relief from imprisonment or restraint." Minn. Stat. § 589.01 (2016). "[T]he function of the writ of habeas corpus is to relieve one from unlawful

restraint.” *State v. Schnagl*, 859 N.W.2d 297, 302 (Minn. 2015) (quotation omitted). A writ of habeas corpus may also be used to challenge conditions of confinement or to raise claims involving fundamental constitutional rights or significant restraints on liberty. *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26-27 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006). The grounds for a petition for habeas corpus are limited to constitutional issues and jurisdictional challenges. *Beaulieu v. Minn. Dep’t of Human Servs.*, 798 N.W.2d 542, 546-48 (Minn. App. 2011), *aff’d on other grounds*, 825 N.W.2d 716 (Minn. 2013).

We review the district court’s findings on a denial of a habeas petition to determine if they are reasonably supported by evidence, but we review questions of law de novo. *Guth*, 716 N.W.2d at 26. The petitioner bears the burden of proving unlawful detention. *Bedell v. Roy*, 853 N.W.2d 827, 829 (Minn. App. 2014).

I.

Martinez challenges the district court’s dismissal of his petition as moot. Martinez’s habeas petition was based on his continuing incarceration and the failure of the commissioner to release him into the community. By the time of the hearing, Martinez had been placed in housing in the community and was no longer incarcerated. A matter is “moot when an event occurs that makes a decision on the merits unnecessary or an award of effective relief impossible.” *Limmer v. Swanson*, 806 N.W.2d 838, 839 (Minn. 2011) (quotation omitted). Mootness raises a question of jurisdiction; it “has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).” *Dean v. City of Winona*, 868 N.W.2d 1, 4-5 (Minn. 2015) (quotation

omitted). “An appeal should be dismissed as moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible.” *Id.* at 5. On its face, Martinez’s habeas petition was moot by the time of the hearing because Martinez was no longer incarcerated.

There are two exceptions to the mootness doctrine: a court may consider an otherwise moot issue that is likely to reoccur but would also continue to evade judicial review, and a court may consider a case if it “is functionally justiciable and of statewide significance.” *Id.* (quotation omitted). Under the first exception, the aggrieved party must show that the challenged action is of such a short duration that it cannot “be fully litigated prior to its cessation or expiration,” and that there is “a reasonable expectation that the same complaining party would be subjected to the same action again.” *Mertins v. Comm’r of Nat. Res.*, 755 N.W.2d 329, 335 (Minn. App. 2008) (quotation omitted). Martinez had eight months in which to bring a habeas petition but did not do so.¹ His continuing incarceration was not of such a short duration that review was impossible.

A court may also consider an otherwise moot case “when the case is functionally justiciable and presents an important question of statewide significance that should be decided immediately.” *Dean*, 868 N.W.2d at 6 (quotation omitted). “A case is functionally justiciable if the record contains the raw material (including effective presentation of both

¹ Appellate counsel informed this court that Martinez is once again in prison following violation of his release conditions. This does not change our view that Martinez’s habeas petition is moot. Martinez was re-incarcerated for violating his release conditions, not for lack of housing.

sides of the issues raised) traditionally associated with effective judicial decision-making.”
Id. (quotation omitted).

Martinez’s argument is based primarily on the constitutionality of a Mankato city ordinance that limits the housing available to registered offenders. This may meet the definition of statewide significance: Martinez asserts that 39 Minnesota communities have similar ordinances. But the city of Mankato is not a party, and is not in a position to defend or explain its position, which does not permit an “effective presentation of both sides of the issues.” Further, we are not persuaded that a habeas petition is the proper vehicle for challenging an ordinance. The commissioner has no power over the city and no power to modify the ordinance or declare it to be unconstitutional. *See* Minn. Stat. § 241.01, subd. 3a (2016) (setting forth powers and duties of the commissioner of corrections). Martinez’s claim must be addressed to the city, which has the power to enact, modify, or repeal ordinances. *See, e.g., Dean v. City of Winona*, 843 N.W.2d 249, 256-57 (Minn. App. 2014) (discussing powers of home-rule-charter cities and stating that such “cities have all the legislative power possessed by the legislature of the state, save as such power is expressly or impliedly withheld” (quotation omitted)), *appeal dismissed*, 868 N.W.2d 1 (Minn. 2015).

The supreme court has “long held that a declaratory judgment action is proper to test the validity of a municipal ordinance, regardless of whether another remedy exists.” *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011). This court wrote that “[w]e have not found any authority that permits a district court to grant general declaratory or injunctive relief in a habeas proceeding[,]” concluding instead that habeas

proceedings are limited to constitutional claims and jurisdictional challenges related to unlawful confinement or conditions of confinement. *Rud v. Fabian*, 743 N.W.2d 295, 304-05 (Minn. App. 2007), *review denied* (Minn. Mar. 26, 2008). Martinez's claims of preemption and unconstitutionality should be raised in a different proceeding in which Mankato is a party and can defend its ordinance. In either a declaratory judgment action or a criminal action, the proper party would be joined and permitted to defend its ordinance or explain the use of its municipal power. *See McCaughtry*, 808 N.W.2d at 337 (declaratory judgment action); *State v. Kuhlman*, 729 N.W.2d 577, 578-79 (Minn. 2007) (challenging enforcement of stoplights through use of cameras); *State v. McElroy*, 828 N.W.2d 741, 744 (Minn. App. 2013) (challenging Minneapolis noise ordinance as overbroad and vague), *review denied* (Minn. June 26, 2013).

The district court did not err by determining that Martinez's petition for a habeas corpus writ was moot.

II.

Martinez asks this court to rule on the lawfulness and constitutionality of HRU review hearings, alleging due process violations. Martinez argues that the commissioner used review hearings to unlawfully extend his incarceration. Although Martinez raised this issue in his habeas petition, the district court did not decide it because it concluded that the petition was moot. Because Martinez addresses a constitutional question related to conditions of confinement, it is appropriately raised by a habeas petition. *See Rud*, 743 N.W.2d at 304-05.

A court asks two questions when conducting a due process analysis: (1) does the complainant have “a liberty or property interest with which the state has interfered”; and (2) if a deprivation of interest has occurred, has the complainant been afforded constitutionally sufficient procedures to challenge the deprivation of a liberty or property interest? *Carrillo v. Fabian*, 701 N.W.2d 763, 768 (Minn. 2005). The supreme court concluded that an inmate has a protected liberty interest in his initial supervised-release date, based on Minn. Stat. § 244.101, subd. 3 (2016), which states that an inmate’s executed sentence shall consist of a minimum of two-thirds of the sentence to be served in prison and a maximum of one-third of the sentence to be served on supervised release. *Id.* at 773.

After sanctions are imposed, an inmate’s liberty interest is limited by the necessity of adhering to conditions of release. *See State ex rel. Marlowe v. Fabian*, 755 N.W.2d 792, 794-95 (Minn. App. 2008) (distinguishing an inmate’s liberty interest in his initial supervised-release date from an inmate’s continuing confinement because he cannot find approved housing). Martinez has at best a limited liberty interest in his release following violation of release conditions.

An inmate’s supervised release may be revoked for violations of conditions of release for an “appropriate period of time” that “may not exceed the period of time remaining in the inmate’s sentence.” Minn. Stat. § 244.05, subd. 3 (2016). The commissioner initially revoked Martinez’s supervised release for 90 days after he violated the release conditions in June 2015. During this period, the commissioner determined that Martinez could only be released under ISR. *See* Minn. Stat. § 244.12 (setting forth conditions of eligibility for ISR), .14 (2016) (setting forth basic elements of ISR). “The

commissioner may impose appropriate conditions of release on the inmate” Minn. Stat. § 244.05, subd. 6(b) (2016).

Martinez challenges the review hearings as the means by which he was deprived of liberty, but the hearings are calculated to provide him with procedural due process. At each review hearing, the HRU reviewed the efforts that Martinez, his agent, and his case manager were making to identify appropriate housing and informed Martinez that he would be released immediately once he had suitable housing. Procedural due process requires that a person have “notice and a meaningful opportunity to be heard before a fair and impartial decisionmaker.” *Marlowe*, 755 N.W.2d at 794. The review hearings afforded Martinez procedural due process.

Martinez touches on the issue of substantive due process, arguing that the commissioner deprived him of his rights by enforcing the Mankato city ordinance. “The doctrine of substantive due process . . . protects individuals from certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them.” *Gustafson v. Comm’r of Human Servs.*, 884 N.W.2d 674, 683 (Minn. App. 2016) (quotation and citation omitted). If a fundamental right is at stake, “the state must show that its action serves a compelling government interest.” *Id.* (quotation omitted). If no fundamental right is implicated, the state must merely show that there is a rational basis for its actions. *Id.* Assuming, as Martinez claims, that he has a fundamental liberty interest in his release during his supervised-release term, he must show “governmental conduct so egregious that it shocks the conscience.” *Mumm v. Mornson*, 708 N.W.2d 475, 487 (Minn. 2006) (quotation omitted). This requires something more than “deliberate indifference” and has

been described as “conduct evincing a purpose to cause harm unrelated to the legitimate object” of an official’s action. *Id.* (quotation omitted). Martinez has not alleged conduct that meets these standards. As to his claim that the commissioner has deprived him of substantive rights by enforcing the Mankato city ordinance, he has not demonstrated how the commissioner is responsible for the Mankato city ordinance or a basis for the commissioner to ignore the city ordinance.

Finally, Martinez challenges whether the commissioner has authority to hold review hearings. Under Minn. Stat. § 243.05, subd. 1 (2016), the commissioner has the power to supervise and enforce conditions of release. In order to do so, the commissioner may designate staff members to act as hearing officers and delegate his duties to them. Minn. Stat. § 243.05, subd. 4 (2016). The commissioner has established rules to effectuate these duties, including the creation of the HRU. Minn. R. 2940.0100-.5700 (2015). These rules include the authority to review an inmate’s progress while on supervised release, Minn. R. 2940.1700, to restructure release conditions, Minn. R. 2940.2700, and to revoke an inmate’s release for violating conditions of release, Minn. R. 2940.3800. The HRU must conduct progress reviews at least annually in order to assess, modify, or develop conditions of supervised release. Minn. R. 2940.0900, subps. 1, 2. The use of review hearings is consistent with these powers and duties.

III.

Martinez argues that the district court erred by refusing to direct the commissioner to give him credit against his conditional-release term for the time he spent in prison when he should have been on supervised release. The district court denied this request for relief

based on *State ex rel. Pollard v. Roy*, 878 N.W.2d 341, 349-50 (Minn. App. 2016). In *Pollard*, this court stated that “time served on supervised release refers to a time during the offender’s executed sentence after the offender is actually released from prison.” 878 N.W.2d at 348 (quotation omitted). This court concluded that an offender is not entitled to a reduction of his conditional-release term for time served on supervised release unless the offender is actually released from prison. *Id.* at 349-50 (quotation omitted). The supreme court vacated this court’s opinion and remanded the case to this court for reconsideration in light of *State ex rel. Duncan v. Roy*, 887 N.W.2d 271 (Minn. 2016). *State ex rel. Pollard v. Roy*, No. A15-1580 (Minn. Dec. 27, 2016) (mem.).

An inmate’s executed sentence is divided into “two parts: (1) a specified minimum term of imprisonment that is equal to two-thirds of the executed sentence; and (2) a specified maximum supervised release term that is equal to one-third of the executed sentence.” Minn. Stat. § 244.101, subd. 1 (2016). An inmate’s supervised-release term is subject to revision if the offender violates its conditions. Minn. Stat. § 244.05, subd. 3(1). Under the statute in effect at the time of Martinez’s offense in June 2011, the district court was obligated to impose a ten-year conditional-release term. Minn. Stat. § 609.3455, subd. 6 (2010). The statute provided that an offender would receive credit against the conditional-release term for the time the offender served on supervised release. *Id.*

In *State ex rel. Duncan v. Roy*, 887 N.W.2d 271, 274-75 (Minn. 2016), the supreme court reviewed the question of whether an inmate can be credited with supervised-release time when he was unable to be released into the community because there was no agent-approved housing available. The sole reason that Duncan was not on supervised release

was because he did not secure approved housing, which was a violation of his supervised-release conditions. *Duncan*, 887 N.W.2d at 273. The supreme court reasoned, “When the DOC revokes an inmate’s supervised release and returns the inmate to prison, that inmate is no longer serving time on supervised release.” *Id.* at 278. The supreme court concluded, “Consequently, an inmate is not entitled to credit against a conditional-release term for any time the inmate spends in prison after the DOC has revoked the inmate’s supervised release.” *Id.* The district court did not err by refusing to credit Martinez’s conditional-release term for the time he spent incarcerated when he was unable to meet the conditions of his supervised release.

Affirmed.