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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0396**

In the Matter of the Risk Level Determination of D. R. C.

**Filed October 8, 2018
Affirmed
Schellhas, Judge**

Minnesota Department of Corrections
File No. OAH 19-1100-34939

D.R.C., Duluth, Minnesota (pro se relator)

Lori Swanson, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul,
Minnesota (for respondent Commissioner of Corrections)

Considered and decided by Schellhas, Presiding Judge; Larkin, Judge; and Stauber,
Judge.*

UNPUBLISHED OPINION

SCHELLHAS, Judge

In this certiorari appeal, relator challenges the administrative law judge's summary
disposition of his appeal of his risk-level-II assignment. We affirm.

FACTS

In 2006, relator D.R.C. was convicted of first-degree criminal sexual conduct and
sentenced to 144 months in prison after he forced a 13-year-old girl to perform fellatio on

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

him. In May 2014, the Minnesota Department of Corrections (DOC) released D.R.C. to a work-release halfway house on intensive supervised release. One year later, the DOC revoked D.R.C.'s release after finding that he had asked a 13-year-old girl, with whom he spoke "routine[ly]," to lift up her shirt. The DOC returned D.R.C. to serve the remainder of his sentence.

On December 14, 2017, D.R.C. appeared at his end-of-confinement review committee (ECRC) hearing. The ECRC applied special concern #9 and assigned D.R.C. a risk level II. D.R.C. sought administrative review of the ECRC's risk-level assignment, and the ECRC moved for summary disposition. An administrative-law judge (ALJ) granted the motion, concluding that D.R.C. "failed to raise a genuine issue of material fact related to the ECRC's risk level assignment."

This certiorari appeal follows.

D E C I S I O N

Minnesota Rule 1400.5500(K) (2017) authorizes an ALJ to recommend summary disposition "of the case or any part thereof where there is no genuine issue as to any material fact." "Summary disposition is the administrative equivalent of summary judgment." *Pietsch v. Minn. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004). On appeal, we review summary dispositions to determine whether any genuine issue of material fact exists and whether the adjudicator applied the law correctly. *In re Assessment Issued to Leisure Hills Health Care Ctr.*, 518 N.W.2d 71, 75 (Minn. App. 1994), *review denied* (Minn. Sept. 16, 1994). In doing so, an appellate court views the

evidence in the light most favorable to the party against whom the disposition was entered. *Tombers v. City of Brooklyn Center*, 611 N.W.2d 24, 27 (Minn. App. 2000).

Minnesota Statutes section 244.052 (2016) governs the risk-level-assignment process for a sex offender nearing the end of his confinement. The statute establishes a five-person ECRC within the DOC to assess, on a case-by-case basis, the public risk posed by predatory offenders who will soon be released from confinement. Minn. Stat. § 244.052, subd. 3(a)–(b). The ECRC must assign one of three risk levels to an offender based on the offender’s risk-assessment score. *Id.*, subd. 3(e). “A risk-level-I designation indicates that an offender has a low risk of reoffending, a risk-level-II designation indicates a moderate risk of reoffending, and a risk-level-III designation indicates a high risk of reoffending.” *In re Risk Level Determination of S.S.*, 726 N.W.2d 121, 124 (Minn. App. 2007), *review denied* (Minn. Mar. 28, 2007).

D.R.C. argues that the ALJ erred by summarily disposing of his appeal of the risk-level-II assignment because he was denied his “constitutional rights to be heard.” We disagree. The United States and Minnesota Constitutions guarantee the right to due process. U.S. Const. amend. XIV, § 1; Minn. Const. art. 1, § 7. Procedural due-process protections restrain a government from actions that deprive a person of life, liberty, or property. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012). If governmental action does not deprive an individual of a protected life, liberty, or property interest, then no process is due. *Id.*

Here, D.R.C. fails to identify a protected life, liberty or property interest of which the government deprived him. As a result, D.R.C. cannot establish that the government

deprived him of due process. See *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975) (“It is well to bear in mind that on appeal error is never presumed. It must be made to appear affirmatively before there can be reversal.” (quotation omitted)). And “[t]he function of an appellate court is that of review. It does not exist for the purpose of demonstrating to the litigants through a detailed statement of the evidence that its decision is right.” *Engquist v. Wirtjes*, 68 N.W.2d 412, 414 (Minn. 1955). Moreover, procedural due process requires notice and the opportunity to be heard. *Sawh*, 823 N.W.2d at 635. The record reflects that the DOC provided D.R.C. with notice of the risk-level-assessment hearing and provided him with the opportunity to be heard. D.R.C. therefore is unable to establish that he was deprived of his right to due process.

D.R.C. also is unable to establish that the ALJ otherwise incorrectly applied the law, or that an issue of material fact exists. And to the extent that D.R.C. challenges the DOC’s revocation of his supervised release in 2015, that challenge was previously rejected by this court. Accordingly, the ALJ properly granted summary disposition of the risk-level-II assignment.

Affirmed.