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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1393**

Ronnie Jerome Jackson, III,
Appellant,

vs.

Michelle Smith,
Respondent,

Keith Ellison,
Respondent.

**Filed April 15, 2019
Affirmed
Slieter, Judge**

Washington County District Court
File No. 82-CV-18-487

Ronnie Jerome Jackson, III, Stillwater, Minnesota (*pro se* appellant)

Keith Ellison, Attorney General, Kelly S. Kemp, Assistant Attorney General, St. Paul,
Minnesota (for respondents)

Considered and decided by Schellhas, Presiding Judge; Worke, Judge; and Slieter,
Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Ronnie Jerome Jackson, III appeals the district court's denial of his writ of *habeas corpus* petition, arguing the district court erred when it concluded the Minnesota Department of Corrections (DOC) did not violate his Fifth Amendment rights. We affirm.

FACTS

In 2012, appellant was committed to the commissioner of corrections for 115 months following a conviction for first-degree arson. On November 26, 2013, appellant spat on two correctional officers as the officers were removing a mattress from his cell. As officers restrained appellant, he resisted and attempted to bite the hand of a third correctional officer.

On November 27, 2013, appellant was served with a notice of violation, an offender rights list, and a witness request list. The notice of violation informed appellant that he was being charged with disobeying a direct order, disorderly conduct, and assaulting staff with a weapon. Appellant was advised of the hearing date and his right to attend the hearing. He was also informed that he may face criminal charges for the November 26 incident. Appellant refused to sign the notice of violation and remained silent.

On December 3, 2013, a disciplinary hearing was held. Appellant did not attend the hearing and a denial was entered on his behalf. At the hearing, the notice of violation, incident reports, and a video of the incident were entered into evidence. The hearing officer found appellant guilty of the violations by a preponderance of the evidence; appellant was

assigned 540 days in segregation and 180 days of extended incarceration. Appellant was informed of his right to appeal the decision to the warden but he did not appeal.

In January 2018, appellant filed a petition for writ of *habeas corpus* naming warden Michelle Smith, Minnesota Correctional Facility-Oak Park Heights, and the Minnesota Attorney General, as respondents. Appellant alleged that the DOC violated his Fifth Amendment right against self-incrimination and his Fourteenth Amendment right to due process by failing to grant him immunity during the disciplinary hearing. Appellant sought a writ releasing him from the additional 180 days of incarceration imposed as a result of the disciplinary hearing.

The district court denied the *habeas* petition, concluding that because appellant was not disciplined for remaining silent, his Fifth Amendment rights were not violated. The district court found appellant's Fourteenth Amendment claim to be duplicative of the Fifth Amendment claim and dismissed the Minnesota Attorney General as a respondent.

This appeal follows. Appellant challenges only the district court's decision regarding his Fifth Amendment rights.

D E C I S I O N

Appellant contends that the district court erred in concluding that the DOC did not violate his Fifth Amendment rights by failing to offer him immunity during the disciplinary hearing. "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). 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. *Guth v. Fabian*, 716 N.W.2d 23, 26-27 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

In reviewing an order denying a *habeas* petition, this court gives great weight to the district court's findings of fact and will uphold the findings if they are reasonably supported by the evidence. *Northwest v. LaFleur*, 583 N.W.2d 589, 591 (Minn. App. 1998). This court, however, reviews questions of law *de novo*. *Id.*

The DOC did not violate appellant's Fifth Amendment rights.

Appellant contends that the DOC violated his Fifth Amendment rights because he was not granted immunity for his testimony at the disciplinary hearing. The Fifth Amendment provides that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V. The privilege allows an individual to refuse to “answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.” *Minnesota v. Murphy*, 465 U.S. 420, 426, 104 S. Ct. 1136, 1141 (1984) (quoting *Lefkowitz v. Turley*, 414 U.S. 70, 77, 94 S. Ct. 316, 322 (1973)).

For the Fifth Amendment privilege to apply, “two distinct elements must be present—compulsion and incrimination.” *Johnson v. Fabian*, 735 N.W.2d 295, 299 (Minn. 2007). Only statements that are compelled *and* that present a “real and appreciable” risk of incrimination are prohibited by the privilege. *Id.* (quotation omitted).

“Compulsion” is present “when the state attaches sufficiently adverse consequences to the choice to remain silent that a person is compelled to speak.” *Id.* at 300. “[W]hen a State compels testimony by threatening to inflict potent sanctions unless the constitutional

privilege is surrendered, that testimony is obtained in violation of the Fifth Amendment” *Lefkowitz v. Cunningham*, 431 U.S. 801, 805, 97 S. Ct. 2132, 2135 (1977).

In addition to “compulsion,” the Fifth Amendment requires that “the information the claimant would be compelled to divulge is *incriminating*.” *Johnson*, 735 N.W.2d. at 309 (emphasis added). “Answers that would in themselves support a conviction or that would furnish a link in the chain of evidence needed to prosecute the claimant are incriminating for purposes of the privilege.” *Id.*

Appellant focuses on *Baxter v. Palmigiano*, 425 U.S. 308, 316, 96 S. Ct. 1551, 1557 (1976), in which an inmate claimed that his Fifth Amendment rights were violated because an adverse inference was drawn from his silence during a prison disciplinary hearing. The court held that the Fifth Amendment could only be violated where the prisoner’s silence, “standing alone and without regard to the other evidence,” had resulted in discipline. *Id.* at 318, 96 S. Ct. at 1557-58. In its explanation, the court noted that while disciplinary hearings are not criminal proceedings, “if inmates are compelled in those proceedings to furnish testimonial evidence that might incriminate them in a later criminal proceeding, they must be offered whatever immunity is required to supplant the privilege and may not be required to waive such immunity.” *Id.* at 316, 96 S. Ct. at 1557 (quotation omitted).

Appellant argues that because he was informed that he may face criminal charges for the incident, the DOC should have granted him immunity at the disciplinary hearing. Although he was informed he might face criminal charges, the DOC did not compel appellant to testify. The DOC’s policy provides that an inmate has the right to be present at the discipline hearing, but the inmate is not required to attend. If an inmate refuses to

attend, the hearing proceeds without him; there are no negative consequences for an inmate's decision not to testify. The hearing officer must make findings solely on the information presented at the hearing and the preponderance of the evidence standard continues to apply. The DOC therefore did not compel appellant's testimony by penalizing him for his silence; rather, the DOC penalized appellant solely for his conduct.

Because appellant was not compelled to testify, his Fifth Amendment rights were not violated. The district court properly applied Minnesota and United States Supreme Court law and did not err.

Affirmed.