

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1421**

In the Matter of the Petition of Scott Peter Zenanko Under Minn. Stat. 14.381.

**Filed June 1, 2021
Affirmed
Reilly, Judge**

Office of Administrative Hearings
File No. OAH 8-1100-36745

Scott P. Zenanko, Bayport, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Alemayehu Ditamo, Assistant Attorney General, St. Paul,
Minnesota (for respondent Minnesota Department of Corrections)

Considered and decided by Reilly, Presiding Judge; Slieter, Judge; and Bryan,
Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

While appellant served consecutive life terms in prison, the Minnesota Department of Corrections disciplined him for contacting victims of his crimes. Appellant filed a petition with the Minnesota Office of Administrative Hearings challenging the restrictions placed on his communications with the victims. An administrative-law judge dismissed his petition. Appellant argues that the administrative-law judge erred when it found that his petition did not state an appropriate claim for relief. We affirm.

FACTS

The district court sentenced self-represented appellant Scott Peter Zenanko to consecutive terms of life in prison after a jury found him guilty of first-degree felony murder, first-degree premeditated murder, attempted first-degree premeditated murder, and burglary. Appellant's current appeal arises out of his continued attempts to contact, and subsequent discipline for contacting, two victims of his crimes. The victims do not wish to have contact with appellant and have found his attempts to initiate contact very upsetting.

In November 2016, appellant first informed his Minnesota Department of Corrections (DOC) case manager that "he sent a rude letter" to a victim (Victim 1) of his crimes and wanted to apologize to her. The DOC operates a victim-centered Restorative Justice Program that, in some cases, allows contact between offenders and victims. Because of appellant's desire to apologize to Victim 1, his case manager referred him to the Restorative Justice Program and an apology letter workshop, but told appellant not to have any further contact with Victim 1.

A fundamental requirement of the Restorative Justice Program is that the victim initiate contact with the offender through the DOC. Sometimes after the victim begins restorative practices, an offender may write the victim an apology letter. To ensure that the letter will not revictimize the recipient, offenders may only send apology letters at the victim's request and after the DOC reviews them. Appellant, however, continued to contact Victim 1 outside the requirements of the Restorative Justice Program. As a result, his case manager issued a written order which read: "You are hereby given a direct order to cease all forms of communication with [Victim 1]. This includes written and verbal

messages passed through a third party. Should you choose to violate this directive, you may receive a charge for Rule Violation #160 – Disobeying a Direct Order.”

In April 2017, appellant’s case manager received a phone call from a man who had the same last name as one of appellant’s other victims (Victim 2). This man shares no relation to Victim 2. The man stated that he received a letter from appellant conveying that appellant believed that he was Victim 2’s father. In the letter, appellant requested contact with Victim 2. Following this phone call, appellant’s case manager gave appellant another written order directing him not to contact Victim 2, either directly or indirectly. The order again confirmed that appellant would be subject to discipline if he contacted Victim 2. At that same time, appellant’s case manager renewed his order not to contact Victim 1. Appellant appealed these orders to various prison administrators and ultimately, to the warden who reviewed the orders and supported them.

In June 2019, Victim 2 contacted appellant’s case manager to report that a private investigator hired by appellant contacted her. The private investigator informed Victim 2 that appellant wanted to apologize to her. The next month, Victim 1 also contacted appellant’s case manager to report that appellant contacted her husband through Facebook and that an individual approached her mother-in-law to ask if she knew appellant. The DOC disciplined appellant by placing him in segregation for his failure to obey the orders prohibiting him from contacting Victim 1 and Victim 2.

Appellant filed a petition with the Minnesota Office of Administrative Hearings (OAH) under Minn. Stat. § 14.381 (2020) challenging the restrictions the DOC placed on his communications with Victim 1 and Victim 2. Appellant argued that the DOC policies

on prisoner mail and telephone use and the written orders from his case manager were unpromulgated rules. Appellant also contended that the DOC's policies violated his due process and First Amendment rights. An administrative-law judge (ALJ) determined that appellant did not state an appropriate claim for relief under Minn. Stat. § 14.381 and dismissed appellant's petition. This appeal followed.

DECISION

Appellant challenges the ALJ's determination that his petition did not state an appropriate claim for relief under Minn. Stat. § 14.381. Appellant specifically argues that the DOC failed to properly follow the rulemaking procedures in the Minnesota Administrative Procedure Act (MAPA), Minn. Stat. §§ 14.001-14.69 (2020), when it adopted its mail and telephone-use policies and issued the written orders from his case manager. "Statutory interpretation is a question of law that we review de novo." *J.D. Donovan, Inc. v. Minn. Dep't of Transp.*, 878 N.W.2d 1, 4 (Minn. 2016).

MAPA prescribes specific procedures that an agency must follow when it adopts policies that meet the statutory definition of a "rule." Minn. Stat. § 14.22. When an agency violates the statutory rulemaking procedures, it engages in unpromulgated rulemaking and an individual may petition under Minn. Stat. § 14.381 to challenge the agency's enforcement of the unpromulgated rule. "Rule" is "every agency statement of general applicability and future effect." Minn. Stat. § 14.02, subd. 4. When the legislature first defined "rule," it included all agency activities within the general definition and then, "as it deemed beneficial to the concerns of efficient government and public participation," excluded specific activities from the definition. *McKee v. Likins*, 261 N.W.2d 566, 577

(Minn. 1977). The legislature exempted the rules of the commissioner of corrections that related to the supervision and governance of inmates and the internal management of state prisons. Minn. Stat. § 14.03, subd. 3(b)(1).

Here, appellant argues that the DOC's mail and telephone-use policies and the orders from his case manager are unpromulgated rules. The mail and telephone-use policies dictate the way inmates may send and receive mail and use the telephone. These policies relate to the supervision of inmates and the internal management of state prisons and fall within the activities exempt from the statutory definition of a "rule." The orders from appellant's case manager, similarly, are not rules. The orders are not generally applicable. Instead, they depend on specific facts and prohibit only appellant from contacting Victims 1 and 2. *See* Minn. Stat. § 14.381, subd. 1(b) (stating that an agency determination is not an unadopted rule "when the agency enforces a law or rule by applying the law or rule to specific facts on a case-by-case basis"). Other inmates remain free to appropriately communicate with victims who desire contact. We conclude that neither the mail and telephone-use policies nor the written orders meet the statutory definition of a "rule." The legislature did not require the DOC to engage in formal rulemaking procedures to promulgate these policies or orders.

Appellant also argues that both the DOC mail and telephone-use policies and the orders violate his constitutional rights. Appellant's petition challenged the policies and

orders under Minn. Stat. § 14.381.¹ The nature of proceedings under section 14.381 is limited in scope to challenges to agency policies as unpromulgated rules. Section 14.381 does not provide an avenue for individuals to raise constitutional claims.

Because the DOC's policies on mail and telephone use and the orders do not meet the statutory definition of a "rule," and because Minn. Stat. § 14.381 does not permit appellant to raise constitutional claims, we conclude that the ALJ properly dismissed appellant's petition for failing to state an appropriate claim for relief.

Affirmed.

¹ To the extent that the ALJ considered the merits of appellant's constitutional claims, it exceeded the scope of its authority. "[A]n administrative agency lacks subject matter jurisdiction to decide constitutional issues because those questions are within the exclusive province of the judicial branch." *Holmberg v. Holmberg*, 578 N.W.2d 817, 820 (Minn. App. 1998), *aff'd*, 588 N.W.2d 720 (Minn. 1999).