

*This opinion is nonprecedential except as provided by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
A25-1528**

Anthony B Graham,
Appellant,

vs.

Marie Houston, et al.,
Respondents.

**Filed March 30, 2026
Affirmed
Smith, Tracy M., Judge**

Rice County District Court
File No. 66-CV-25-1388

Anthony B. Graham, Togo, Minnesota (self-represented appellant)

Keith Ellison, Attorney General, Linnea Vanpilsum-Bloom, Assistant Attorney General,
St. Paul, Minnesota (for respondents)

Considered and decided by Connolly, Presiding Judge; Smith, Tracy M., Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from the denial of his amended petition for a writ of habeas corpus, appellant Anthony B. Graham argues that the district court erred by denying the petition because respondents, the commissioner of corrections and employees of Minnesota

Department of Corrections (DOC),¹ violated his due-process rights by removing him from the Challenge Incarceration Program (CIP) without sufficient evidence. Graham also argues that the district court erred by removing him from the program without holding an evidentiary hearing. We affirm.

FACTS

In December 2020, Graham pleaded guilty to first-degree sale of a controlled substance, unlawful drug possession, unlawful firearm possession, and two counts of felony theft, and was sentenced to 126 months in prison. *State v. Graham*, No. A21-0941, 2023 WL 2230322, at *1, *3 (Minn. App. Feb. 27, 2023), *rev. denied* (Minn. May 16, 2023). His convictions and sentence were affirmed on appeal. *Id.* at *4-8.

While incarcerated, Graham was accepted into CIP. CIP is a program for offenders committed to the custody of the Minnesota Commissioner of Corrections that provides rigorous, structured, and individualized programming. Minn. Stat. §§ 244.17-.172 (2024). The commissioner of corrections selects eligible offenders to participate in CIP, and the offender agrees to participate by signing a written contract agreeing to comply with the program's requirements. Minn. Stat. § 244.17, subd. 1(a).

CIP has three phases. Phase I lasts at least six months, during which the offender remains confined in a correctional facility and must successfully participate in all required intensive treatment, educational, and work programs. Minn. Stat. § 244.172, subd. 1. Participants must also submit to random drug and alcohol testing. *Id.* Phase II also lasts at

¹ Graham named his supervising agent, probation agent, warden, the executive officer of hearings and release, and the commissioner of corrections as defendants in this suit.

least six months. *Id.*, subd. 2. During this phase, the offender is released from prison under an intensive supervision and surveillance program in which the offender continues to be subject to random or for-cause drug and alcohol tests and reports daily to agents or program staff. *Id.* Phase III continues until the commissioner determines that the offender has successfully completed the program or the offender's sentence expires, whichever occurs first. *Id.*, subd. 3.

When he reached Phase II of CIP, Graham was released into the community. Thereafter, on March 12, 2025, Graham provided an altered urine sample to his supervising agent and admitted that he had been using methamphetamine. The agent also found alcohol in Graham's home in violation of the CIP contract. The agent determined that Graham had violated the conditions of his release. With Graham's agreement, the agent "restructured" Graham's CIP to restart Phase II of the program. Graham signed the agreement, agreeing to the restructured conditions of release, which continued to include no use of mood-altering substances.

Thirteen days later, on March 25, Graham was again asked to submit to a drug test. Graham tested positive for methamphetamine, amphetamine, and fentanyl. In the violation report, the supervising agent stated, "When I informed [Graham] of the positive test results, he admitted that he had used meth within the last week. He stated that it is very accessible right now and it is challenging to avoid it."

A hearing was held on revocation of Graham's conditional release. The following facts are derived from the revocation-hearing report, which summarized the testimony and

other evidence.² The supervising agent testified that, when Graham was asked to provide a drug test on March 25, Graham stated that he would be clean but that he was really nervous because of his last positive test. The agent also testified that, after Graham tested and learned of the positive results, Graham “specifically admitted to using since his last restructure.” Graham testified that he “did not recall saying it like that” and that he only admitted to using methamphetamine prior to the restructure. Graham testified that he recalled saying “within the last week or so . . . and the previous restructure was roughly a week or so . . . roughly ten days” and that he was referring to the restructure date when he was discussing his last use. The agent recommended that Graham’s participation in CIP be revoked “in accordance with CIP program,” noting that this was Graham’s “second violation on CIP” and that “[t]hese violations occurred within a very short time of one another and would be considered material violations.” The agent’s recommendation also noted that Graham’s “own living environment became one of his biggest contributing factors in his relapse” and that Graham is “a risk to the public and above all himself especially when he acknowledged that he did not realize there was Fentanyl in the methamphetamine he was using.”

The hearing officer revoked Graham’s CIP status, providing the following rationale:

The decision was based in accordance with the CIP Statute regarding the removal of an individual from the CIP for specific violations. The Commissioner of Corrections has no discretion or control over possible removals from CIP in situations where the individual has repeatedly violated the conditions of release or has committed a new criminal offense.

² Transcripts of conditional-release revocation hearings are generally not available and are not present here.

Removal from CIP is mandatory for repeat violators, even if none of the violations were material and regardless of their particular circumstances.^[3]

Graham filed a petition, and later an amended petition, for a writ of habeas corpus, asserting due-process violations. Specifically, Graham asserted that his supervising agent “pressured and continued to question [Graham] for the exact date of use in which was not given” and that the hearing officer never “ask[ed] the pertinent question of, did you use since signing the restructure agreement.” Graham maintained that he did not use additional mood-altering chemicals after signing the restructure agreement. Graham also asserted that, according to DOC Policy 205.231, D(1), one of the two urine samples taken on March 25 should have been sent to the lab for further analysis but that did not happen. Lastly, Graham requested a hearing on his amended petition. In an appendix to his amended petition, Graham attached a letter that he had sent to DOC’s director of field services mentioning body-worn-camera (BWC) footage and asking that the supervising agent’s BWC footage from the March 25 interaction be reviewed and that DOC Policy 301.037, which relates to BWCs, be enforced.

The district court, without a hearing, denied Graham’s amended petition for habeas corpus and his request to compel production of the BWC footage.

This appeal follows.

³ At the revocation hearing, an incident in which Graham was late to the chemical-use assessment scheduled as part of his CIP restructure was also discussed. According to the discussion, Graham was late to this appointment due to a supervising agent arriving at his house around the time that he needed to leave but Graham rescheduled and timely completed the assessment. The hearing officer found no violation based on this incident.

DECISION

Graham argues that the district court abused its discretion by denying his habeas corpus petition and that the district court violated his rights by denying his petition without holding an evidentiary hearing.

I. The district court did not abuse its discretion by denying Graham’s habeas corpus petition.

A writ of habeas corpus may be used “to obtain relief from imprisonment or restraint.” Minn. Stat. § 589.01 (2024). “On review of an order denying a petition for a writ of habeas corpus, 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.” *State ex rel. Marlowe v. Fabian*, 755 N.W.2d 792, 794 (Minn. App. 2008). Graham argues that the finding that he used a mood-altering substance a second time in violation of his CIP conditions is not supported by the evidence and contends that the removal of his CIP status violated his right to due process. We address each argument in turn.

A. Finding of Second Violation

If an offender violates the conditions of CIP, the commissioner “shall impose severe and meaningful sanctions.” Minn. Stat. § 244.171, subd. 4(a). There are several situations in which an offender must be removed from CIP. *Id.* One of those reasons is that the offender “repeatedly fails to follow the rules of the program.” *Id.*, subd. 4(a)(1), (3).⁴

⁴ Other bases for removal include when an offender commits a “material violation” of CIP rules or “presents a risk to the public, based on the offender’s behavior, attitude, or abuse of alcohol or controlled substances.” Minn. Stat. § 244.171, subd. 4(a)(1), (3). Neither of these reasons appears to be the basis for Graham’s removal.

“Revocation is justified when there is enough evidence to satisfy the decision-maker that the conduct of the offender does not meet the conditions of his release. *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 27 (Minn. App. 2006), *rev. denied* (Minn. Aug. 15, 2006). We review “a decision to revoke an offender’s release for a clear abuse of discretion.” *Id.*

Graham does not dispute that he committed a violation of his CIP conditions prior to the restructure agreement. But he argues that the evidence does not support the hearing officer’s finding that he committed a second violation after the restructure agreement because the finding was “based on disputed testimony.”

In their briefing, the parties focus on whether the hearing officer’s findings in the revocation-hearing report are supported by sufficient evidence. But, because we are reviewing the district court’s decision on the habeas petition, the appropriate inquiry is whether the district court’s findings are supported by sufficient evidence. *See State ex rel. Gilo v. Schnell*, No. A20-1122, 2021 WL 1733372, at *3 (Minn. App. May 3, 2021).⁵

Here, the district court made limited findings, as follows:

Based on all filings provided by the parties and the totality of the record, the Court finds that Petitioner has not met his burden of proof to demonstrate that his incarceration is illegal. Under the instant facts, there is no provision within Minnesota law granting the Court discretion to disregard the factfinder’s assessment.

In *Gilo*, we held that, when a district court “did not make an explicit finding” on a key fact underlying an offender’s termination from CIP—in that case, the fact that the

⁵ We rely on this nonprecedential opinion as persuasive authority. *See Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800-01 (Minn. App. 1993).

offender had been in the presence of a firearm—the district court “implicitly affirmed” DOC’s decision. *Id.* We then went on to review whether the hearing officer’s findings were supported by the record. *Id.* Here, in light of the district court’s limited findings, and applying the same reasoning as in *Gilo*, we assume that the district court implicitly affirmed the hearing officer’s findings in the revocation-hearing report. The question, then, is whether the finding in the revocation-hearing report that Graham violated the conditions of his release is supported by the record evidence before the hearing officer. *See Guth*, 716 N.W.2d at 27.

The revocation-hearing report states that the agent testified that Graham admitted to using methamphetamine within the previous week and, specifically, since his last restructure. The agent’s violation report states that Graham “admitted that he had used meth within the last week” and said that “it is very accessible right now and it is challenging to avoid it.” The agent’s testimony at the hearing appears to have been largely consistent with the violation report, though the detail that Graham specifically admitted that he had used methamphetamine since his last restructure was included only in the agent’s testimony, not in the violation report. Regardless, the statement that Graham had admitted using methamphetamine “within the last week” is consistent with him using since the restructure, which was thirteen days earlier. It is true that Graham testified that he had not used methamphetamine since the last restructure and that “he was referring to his last restructure when he was discussing his last use.” But the hearing officer did not credit this testimony

and found the agent's testimony "credible and reliable."⁶ Ultimately, the hearing officer determined that Graham's "violation behaviors" were "inconsistent with the principles of CIP." The evidence supports the hearing officer's finding that he committed a second violation of his CIP conditions after the restructure agreement. It therefore supports the district court's adoption of that finding.

B. Due Process

Graham appears to make two procedural-due-process arguments. First, Graham argues that he was not afforded due process because he was not able to rebut the evidence against him at the revocation hearing. Second, Graham argues that he was entitled to, but did not receive, a confirmation drug test under DOC Policy 205.231, D(1).

"Whether due process is required in a particular case is a question of law," reviewed *de novo*. *Carrillo v. Fabian*, 701 N.W.2d 763, 768 (Minn. 2005). "Prison authorities must provide inmates with an appropriate level of due process before they are deprived of a protected liberty interest." *Id.* The first inquiry in a due-process challenge is "whether the complainant has a liberty or property interest with which the state has interfered." *Id.* If the state has interfered with a complainant's liberty or property interest, the second inquiry is "whether the procedures attendant upon that deprivation were constitutionally sufficient." *Id.*

⁶ Graham argues that the supervising agent's testimony at the revocation hearing was inaccurate and that the hearing officer should have reviewed the agent's BWC video to resolve the discrepancy between the agent's account and Graham's account of what happened during testing on March 25. We address Graham's argument about BWC footage below.

We proceed directly to the second inquiry because it is dispositive of the due-process argument here. As discussed below, even assuming that Graham has a liberty interest in his continued participation in Phase II of CIP, he received sufficient due process at his revocation hearing.

Removal from CIP follows the same procedures as supervised-release revocation. *See* Minn. Stat. §§ 244.171, subd. 4(3), .05, subd. 1. The due-process requirements for parole revocation include:

- (a) written notice of the claimed violations of parole;
- (b) disclosure to the parolee of evidence against him;
- (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation);
- (e) a “neutral and detached” hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. . . . It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.

Morrissey v. Brewer, 408 U.S. 471, 489 (1972).

Graham asserts that he was denied a right to “present witnesses and documentary evidence” under *Morrissey*. *Id.* Specifically, Graham asserts that he was entitled to BWC footage under DOC Policy 301.037, G(1), (2)(a), which requires supervised-release agents to wear, power on, and use their BWC during client field visits, including while “[w]itnessing conduct that constitutes a violation of the conditions of supervision.” Additionally, DOC Policy 301.037, M4(b)(7), provides that “[d]ata must be made available

to prosecutors, courts, defense attorneys, the hearing and release [u]nit, and other criminal justice entities as provided by law.”

Respondents contend that “there is no record evidence that body camera footage existed or was requested at Graham’s revocation hearing.” And they cite *Semler v. McGowan*, No. A19-0710, 2020 WL 54558, at *5 (Minn. App. Jan. 6, 2020), *rev. denied* (Minn. Mar. 25, 2020), for the proposition that a violation of agency policy does not automatically amount to a due-process violation. While this is true, it does not mean that an agency’s breach of its own policy never amounts to a due-process violation. But, based on the revocation-hearing report, Graham did not raise the issue of the BWC footage at the revocation hearing. Because Graham did not adequately raise this issue at the revocation hearing, he was not denied the ability to present evidence about it at that hearing.

Graham also argues that he was entitled to a confirmation urine analysis (UA) of the second drug test under DOC Policy 205.231. That policy provides that a confirmation test should be ordered “only if an offender refuses to acknowledge that a screening test is positive and there is a plan to proceed to revocation or to impose intermediate sanctions.” Graham does not deny that the UA was positive. Instead, he claims that the UA was positive because of his methamphetamine use prior to the restructure. But, in making that argument, Graham essentially concedes that he did not “refuse to acknowledge” that the test was positive. His argument that he was entitled to a confirmation test is therefore unconvincing. Moreover, Graham’s CIP revocation appears to have been based on his admission to using methamphetamine, as well as on his positive UA. We see no violation of due process in the fact that a confirmation test was not ordered.

II. The district court did not abuse its discretion by denying Graham’s habeas petition without an evidentiary hearing.

Appellate courts review denial of an evidentiary hearing for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). In a habeas case, “[a] petitioner is entitled to an evidentiary hearing where his petition alleges facts which, if true, entitle him to relief.” *State ex rel. Gray v. Tahash*, 156 N.W.2d 228, 229 (Minn. 1968).

Respondents contend that a hearing was not necessary because Graham’s amended habeas petition to the district court focused on whether the hearing officer’s decision was supported by record evidence and whether Graham was afforded sufficient due process—not on whether “the hearing officer reached the wrong conclusion about whether [Graham] violated the terms of his restructured CIP release”—and that the district court could fully review the issues raised on the existing record.

Graham argues that he was entitled to a hearing on the question of whether respondents suppressed BWC evidence that could have supported his version of events. We are not persuaded. Graham was entitled to a hearing if he alleged facts, that if true, would entitle him to relief. *See Gray*, 156 N.W.2d at 229. Graham’s amended habeas petition itself does not reference BWCs or the DOC policy on BWCs; instead, it focuses on Graham’s due-process claims and the DOC’s confirmation-test policy. We note that the amended petition concludes with a request for a hearing “to discuss-if any, disputed facts” and has a letter attached from Graham to DOC’s director of field services that references BWC footage. But the reference to “disputed facts” and the attachment of a letter referencing BWC footage did not articulate to the district court that he was asserting facts

about the BWC footage that, if true, would entitle him to relief. Although Graham more clearly presents the issue on appeal, he did not articulate it in his amended habeas petition. Because we do not address arguments not raised to the district court, *see Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), we conclude that the district court did not abuse its discretion by denying Graham's petition without an evidentiary hearing.

Affirmed.