STATE OF MINNESOTA

IN COURT OF APPEALS

A11-1797

Peter Stephenson, a/k/a Peter Rickmyer,
petitioner,

Appellant,

vs.

Tom Roy, in his official capacity as
Minnesota Commissioner of Corrections,

Respondent.

O R D E R O P I N I O N

Anoka County District Court
File No. 02-CV-11-3668

Considered and decided by Larkin, Presiding Judge; Peterson, Judge; and Crippen, Judge.*

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Appellant challenges the district court's denial of his petition for a writ of habeas corpus that challenged the respondent's March 2011 revocation of appellant's Intensive Supervised Release.

2. Appellant was sentenced to 90 days imprisonment upon revocation and was released on June 6, 2011. Appellant was initially placed on house arrest, but his status at this time is unclear. The record does not indicate whether any changed circumstances

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

render a decision moot in this case, but the state has not sought relief on grounds of mootness; under these circumstances, we will address the appeal.

3. Where the facts are undisputed, this court reviews the denial of a habeas corpus petition de novo. *Aziz v. Fabian*, 791 N.W.2d 567, 569 (Minn. App. 2010) (questions of law pertaining to a habeas petition are subject to de novo review); *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006). "The district court's findings in support of a denial of a petition for a writ of habeas corpus are entitled to great weight and will be upheld if reasonably supported by the evidence." *Aziz*, 791 N.W.2d at 569.

4. The district court, denying appellant's petition for habeas relief in August 2011, reviewed several issues, including whether the conditions of appellant's supervised release were reasonable and whether he was afforded sufficient due process of law at the revocation hearing. The record indicates that appellant did not object to the sufficiency of the evidence presented at the hearing to show violations of certain conditions of his release, and the district court found no merit in appellant's assertions that due process was denied or conditions of his release were unlawfully imposed.

5. After appellant's release from prison, respondent imposed on appellant several general and specific conditions of release, consistent with his authority under Minnesota law. *See* Minn. Stat. § 244.05, subd. 6(b) (2010). One of the standard conditions imposed was that appellant "at all times follow the instructions of the agent." Minn. R. 2940.2000, subp. 3 (2011). Appellant's release was revoked upon the finding

that he had violated this condition by not following certain directives given to him by his agent regarding legal preparations and filings and contact with certain individuals.

6. Appellant briefly asserts in general language that these conditions, enforced in the revocation proceeding, constituted violations of the attorney-client privilege, wrongfully denied appellant access to civil proceedings, or were otherwise unlawful.

7. The district court determined that all of the restrictions imposed on appellant were valid conditions of supervised release. In support of this decision, respondent asserts that the conditions imposed on appellant were all reasonable and based on the need for public safety. *See* Minn. Stat. § 244.14, subd. 1(2) (2010). Conditions of release may include no-contact orders, *State v. Schwartz*, 628 N.W.2d 134, 141 (Minn. 2001), the requirement that an offender remain law-abiding, Minn. R. 2940.2000, subp. 9 (2011), and other reasonable conditions related to an offender's rehabilitation.

8. Appellant has failed to articulate to this court or to the district court any reasons to support his general assertions and has failed to make a record to form the basis for a decision as to why any of his conditions of release go outside the parameters of respondent's authority. Therefore, this argument is waived. *See State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) ("An assignment of error in a brief based on 'mere assertion' and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection.") (citing *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997)), *aff'd on other grounds*, 728 N.W.2d 243 (Minn. 2007); *State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (court may decline to reach an issue in absence of adequate briefing).

9. Appellant also asserts that the procedural due process currently afforded releasees in revocation hearings is inadequate and there is a need for this court to more carefully articulate the notice and hearing process that the Department of Corrections should employ. This argument is waived for purposes of appeal for the reasons listed above. *See Wembly*, 712 N.W.2d at 795; *Wintz*, 558 N.W.2d 480. Insofar as appellant articulates subjects for better process, there is nothing in the record to demonstrate that due process was denied appellant or that his substantial rights were prejudiced.

10. As an example of appellant's due process assertions, he argues that due process entitles him to subpoena witnesses to appear at a revocation hearing. Department of Corrections policy governing revocation hearings provides: "The offender may call witnesses if approved by hearing officer and must make arrangements to have witnesses present. The department does not have authority to compel a witness on behalf of an offender." Minn. Dep't of Corr., *Policies, Directives & Instructions Manual*, Policy 106.140 (2012). Although a probationer is entitled to subpoena witnesses to appear at a probation revocation hearing, Minn. R. Crim. P. 27.04 subd. 2(1)(c)d, there is no corresponding rule in the release revocation context and "the revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations." *Morrissey v. Brewer*, 408 U.S. 471, 480, 92 S. Ct. 2593, 2600 (1972)). Further, there is no indication that appellant was prejudiced by the lack of subpoena power in this case. *See Riehm v. Comm'r of Pub. Safety*, 745 N.W.2d 869, 877 (Minn. App. 2008) ("An appellant cannot assert a procedural due-process claim without first establishing that he has suffered a 'direct and

personal harm' resulting from the alleged denial of his constitutional rights."), *review denied* (Minn. May 20, 2008).

11. Appellant also challenges the neutrality of the hearing officer who conducted the revocation hearing, but he provides no evidence to support his allegation of bias, and "[t]he fact that the hearing officer decided against [appellant] does not alone show that [he] was biased against him." *Guth*, 716 N.W.2d at 28. This argument has no merit.

12. Appellant also claims that his due process rights were violated because the hearings and release unit declined to rule on his pre-hearing motions before the revocation hearing. There is no statute, rule, or caselaw to suggest that a releasee is entitled to challenge the constitutionality of his release conditions before or during the revocation proceedings, given the administrative nature of revocation. *See Holt v. State Bd. of Med. Exam'rs*, 431 N.W.2d 905, 906 (Minn. App. 1988) (stating that "administrative bodies generally lack subject-matter jurisdiction to decide constitutional issues"), *review denied* (Minn. Jan. 13, 1989); *see also State v. Schwartz*, 615 N.W.2d 85, 89 (Minn. App. 2000) (stating that corrections officials are administrative officers). There is no merit in this claim.

13. Lastly, appellant argues that he was denied due process because the hearings and release unit did not fully consider his appeal. Aside from an unsupported allegation about the executive officer improperly contacting the hearing officer, appellant offers no evidence for the claim that his appeal was not fully considered. This argument also is without merit.

IT IS HEREBY ORDERED:

1. The district court's order is affirmed.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(b), this order opinion will not be published and shall not be cited as precedent except as law of the case, res judicata, or collateral estoppel.

Dated: May 8, 2012 BY THE COURT

/s/
Gary L. Crippen, Judge