FILED
November 15, 2021
OFFICE OF APPELLATE COURTS

STATE OF MINNESOTA

IN COURT OF APPEALS

A21-0722

Guy I. Greene, petitioner,

Appellant,

vs.

Jodi Harpstead, Commissioner of Human Services, et al.,

Respondents.

ORDER OPINION

Carlton County District Court
File No. 09-CV-21-138

Considered and decided by Gaïtas, Presiding Judge; Reilly, Judge; and Klaphake, Judge.*

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

1. Appellant Guy I. Greene—who was indeterminately civilly committed to the Minnesota Sex Offender Program (MSOP) as a sexually dangerous person (SDP) in 2006—appeals the district court's denial of his petition for a writ of habeas corpus. Respondents Jodi Harpstead, Commissioner of the Minnesota Department of Human Services (DHS), and Nancy Johnston, Executive Director of the MSOP, ask us to affirm.

2. Greene's habeas petition requested his immediate release from confinement based on "the ongoing threat and peril" that he experiences as an individual confined to the

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

MSOP's Moose Lake facility during the COVID-19 pandemic. He also alleged that he should be released because he no longer satisfies the criteria for civil commitment.

3. A writ of habeas corpus is a statutory civil remedy available "to obtain relief from imprisonment or restraint." Minn. Stat. § 589.01 (2020). Individuals who are civilly committed may challenge the legality of their commitment through habeas corpus. *Joelson v. O'Keefe*, 594 N.W.2d 905, 908 (Minn. App. 1999), *rev. denied* (Minn. July 28, 1999). "A writ of habeas corpus may also be used to raise claims involving fundamental constitutional rights and significant restraints on a[n] [individual's] liberty or to challenge the conditions of confinement." *State ex rel. Guth v. Fabian*, 716 N.W.2d 23, 26-27 (Minn. App. 2006), *rev. denied* (Minn. Aug. 15, 2006). But a habeas petition may not be used to collaterally attack an underlying commitment. *Joelson*, 594 N.W.2d at 908 (citing *State ex rel. Thomas v. Rigg*, 96 N.W.2d 252, 257 (Minn. 1959)).

4. The petitioner has the burden of showing that his detention is illegal. *Case v. Pung*, 413 N.W.2d 261, 262 (Minn. App. 1987), *rev. denied* (Minn. Nov. 24, 1987). When reviewing a district court's ruling on a petition for a writ of habeas corpus, appellate courts uphold the district court's findings if they are reasonably supported by the evidence. *Rud v. Fabian*, 743 N.W.2d 295, 297 (Minn. App. 2007), *rev. denied* (Minn. Mar. 26, 2008). Questions of law, however, are reviewed de novo. *Id.* at 298.

5. Regarding his request for release based on the pandemic, Greene's habeas petition alleged that respondents failed to address the health risks presented by COVID-19 in the Moose Lake facility. Although Greene did not state that he had contracted COVID-19, he asserted that he is at a higher risk of contracting the virus due to his confinement.

6. In response, respondents provided the district court with an affidavit of the Health Services Director (the director) of MSOP. The director described the following policies and precautions enacted by MSOP's Moose Lake facility to limit exposure and transmission of COVID-19:

a. Medical personnel on-site at all times; weekly COVID-19 testing for all clients and staff since mid-November 2020; providing COVID-19 vaccinations to clients and staff since January 2021; screening all employees for symptoms daily before entering the facility; cleaning "high-touch" areas a minimum of three times per day; posting signs throughout the facility reminding clients and staff to practice social distancing; establishing separate living facilities for elderly clients or those with serious underlying health conditions; providing alcohol-based hand sanitizer to all clients and staff; allowing clients to check out cleaning supplies for their rooms; ensuring soap and sinks in rooms for handwashing; initially suspending all in-person visits and meetings between clients and outside visitors; providing clients with a cloth mask and employees with medical and cloth masks; requiring all employees to wear masks since May 2020 and all clients since November 2020; limiting cross-unit interactions; when necessary, having clients eat in their rooms, suspending vocational work and educational opportunities, and closing the gym and music room; as much as practicable, limiting staff to work with only one unit; dedicating an isolation unit for clients who have tested positive for COVID-19 or exhibit symptoms of COVID-19;

quarantining newly admitted or readmitted clients for 14 days; contact tracing for clients and staff; and regularly communicating updates on COVID-19 information to clients and staff.

b. All precautions are in-line with the Centers for Disease Control and Prevention's recommendations for congregate living settings and DHS guidance. The facility is constantly re-evaluating its procedures considering the dynamic nature of the COVID-19 pandemic.

7. The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment; this prohibition protects prisoners from deliberate indifference to their serious medical needs. *A.H. v. St. Louis County*, 891 F.3d 721, 726 (8th Cir. 2018) (quoting *Gregoire v. Class*, 236 F.3d 413, 417 (8th Cir. 2000)). Although the Eighth Amendment does not extend to individuals who are involuntarily committed, the rights of those individuals are protected under the Fourteenth Amendment. *Ingrassia v. Schafer*, 825 F.3d 891, 897 (8th Cir. 2016). Because the Fourteenth Amendment provides detainees with the same level of protection that prisoners receive under the Eighth Amendment, courts apply the deliberate-indifference standard to claims of institutional maltreatment brought by involuntarily committed individuals. *Hott v. Hennepin County*, 260 F.3d 901, 905 (8th Cir. 2001). A state official violates the Fourteenth Amendment by being deliberately indifferent to the need to protect a detainee from a substantial risk of serious harm. *Curry v. Crist*, 226 F.3d 974, 977 (8th Cir. 2000).

8. In our recent nonprecedential decision in *Semler v. Harpstead*, we considered whether the MSOP was deliberately indifferent to the risks of COVID-19 in its Moose

Lake facility. No. A20-1285, 2021 WL 1245297 (Minn. App. Apr. 5, 2021), *rev. denied* (Minn. June 29, 2021). There, in response to a habeas petition alleging cruel and unusual punishment, the MSOP submitted comprehensive information about the precautions it had taken against COVID-19. We agreed with the district court's conclusion that, given the precautions taken, the MSOP was not deliberately indifferent to the risks of COVID-19 in its facility, and we affirmed the district court's denial of Selmer's petition.

9. Here, respondents provided the district court with the same evidence of precautions taken against COVID-19 in the Moose Lake facility. The district court concluded that, on this record, the MSOP responded reasonably to the pandemic and was not deliberately indifferent to the risks of the disease to the facility's population.

10. The record here is virtually identical to the record we considered in *Semler*, and we have no reasoned basis for reaching a different conclusion than we did in *Semler*. We therefore affirm the district court's decision to deny habeas relief on the ground of the MSOP's response to the pandemic.

11. Greene also challenges the MSOP's response to the COVID-19 pandemic using the standard established by the United States Supreme Court in *Kingsley v. Hendrickson*, 576 U.S. 389, 135 S. Ct. 2466 (2015), an excessive-force case brought under federal law. Because Greene did not raise this argument before the district court, we do not consider it. *See In re Welfare of K.T.*, 327 N.W.2d 13, 16-17 (Minn. 1982) (stating, "[i]t is well settled that a party may not raise for the first time on appeal a matter not presented to the court below").

12. Greene further argues that the district court erred in rejecting his claim that he no longer satisfies the criteria for commitment as an SDP. The district court denied habeas relief because Greene has other legal means of challenging his commitment as an SDP and a habeas petition cannot be used as a vehicle to collaterally attack a decision made by another prescribed tribunal. *See* Minn. Stat. §§ 253D.27-.28 (2020) (providing a process for a person committed as an SDP to challenge the commitment by petitioning the special review board for discharge and then seeking judicial review of the board's recommendations).

13. We agree with the district court that Greene's use of a habeas petition to challenge his commitment is an improper collateral attack on a decision made by a statutorily-created tribunal that follows statutory procedures.[1] *See State ex rel. Butler v. Swenson*, 66 N.W.2d 1, 4 (Minn. 1954) (stating that questions that can be "reviewed through some other regular legal procedure have no place in a habeas corpus proceeding"); *see, e.g.*, *Linehan v. Piper*, No. A16-1584, 2017 WL 1208757, at *2 (Minn. App. Apr. 3, 2017) (holding that the appellant's habeas-corpus petition was the incorrect vehicle for challenging his underlying civil commitment because his request for discharge was controlled by the civil-commitment statute); *Stevens v. Ludeman*, No. A07-1195, 2008 WL 2574475, at *5 (Minn. App. July 1, 2008) (affirming the denial of a petition for habeas

[1] We also note that Greene's most recent petition for release using the appropriate statutory process was dismissed in April 2019 because he withdrew his petition before the evidentiary hearing.

corpus, explaining that the appellant may challenge his continued commitment using the procedures outlined in the civil-commitment statute), *rev. denied* (Minn. Sept. 23, 2008).

14. For the first time on appeal, Greene challenges the constitutionality of the SDP statutory scheme because it is not "narrowly tailored" and contends that his civil commitment violates due process under the framework of *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Because these arguments were not raised below, we do not consider them. *See K.T.*, 327 N.W.2d at 16-17.

IT IS HEREBY ORDERED:

1. The district court's order is affirmed.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: 11/15/2021

BY THE COURT

Theodora Gaïtas

Judge Theodora Gaïtas