

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37028

WILLIAM LIGHTNER,)	2011 Unpublished Opinion No. 438
)	
Petitioner-Appellant,)	Filed: April 12, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
SEX OFFENDER CLASSIFICATION)	THIS IS AN UNPUBLISHED
BOARD, MOSECLENE SUNDERLAND,)	OPINION AND SHALL NOT
PAMELA HUNTSMAN, THOMAS HEARN,)	BE CITED AS AUTHORITY
GARY HORTON, BRENDA AUSMUS,)	
OLIVIA CRAVEN, IDAHO PAROLE)	
COMMISSIONERS, and JOHN and JANE)	
DOES I-VI,)	
)	
Respondents.)	
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Ronald J. Wilper, District Judge.

Order dismissing petition for writ of habeas corpus, affirmed.

William Lightner, Boise, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Mark A. Kubinski, Deputy Attorney General, Boise, for respondents.

MELANSON, Judge

William Lightner appeals from the order dismissing his petition for writ of habeas corpus. We affirm.

I.

FACTS AND PROCEDURE

In 1993, Lightner was charged with three counts of lewd conduct with a minor child under sixteen. I.C. § 18-1508. In 1994, pursuant to a plea agreement, Lightner entered a plea of guilty to one count and the other two counts were dismissed. The district court imposed a unified sentence of twenty years, with a minimum period of confinement of three years, and retained jurisdiction. After receiving an extensive report, the sentencing court followed the

recommendation of the Department of Correction to relinquish jurisdiction. Lightner served nine years in prison before being paroled.

Prior to Lightner's 2004 parole date, the Sexual Offender Classification Board (Board) reviewed his record and conducted an assessment as provided under the Sexual Offender Registration Notification and Community Right-to-Know Act, I.C. §§ 18-8301 to 18-8331. The Board found that Lightner presented a high risk of committing a sexual reoffense and, thus, the Board classified Lightner as a violent sexual predator (VSP). In 2005, Lightner appealed the VSP designation to the district court. The district court affirmed Lightner's VSP designation. Lightner then appealed the district court's decision to this Court, which upheld the designation. *See Lightner v. State*, 142 Idaho 324, 127 P.3d 227 (Ct. App. 2005). In 2005, Lightner absconded from parole and fled to Belize. He was subsequently apprehended, his parole was revoked, and he was returned to the custody of the Department of Correction to serve his full prison term without credit for the time he was at large.

Lightner initiated the current action by filing a petition and an amended petition for writ of habeas corpus. Subsequently, Lightner filed a motion for default judgment, arguing that the state failed to timely respond to his petition. The district court denied Lightner's motion for default judgment finding the state had timely responded. The district court then granted the state's motion to dismiss the petition. Lightner appeals.

II.

STANDARD OF REVIEW

The writ of habeas corpus is a constitutionally-mandated mechanism to effect the discharge of an individual from unlawful confinement. *See* IDAHO CONST. art. I, § 5; I.C. §§ 19-4201 to 19-4229; *Mahaffey v. State*, 87 Idaho 228, 231, 392 P.2d 279, 280 (1964); *Gawron v. Roberts*, 113 Idaho 330, 333, 743 P.2d 983, 986 (Ct. App. 1987). "The essence of habeas corpus is an attack upon the legality of a person's detention for the purpose of securing release where custody is illegal . . . [and] is an avenue by which relief can be sought where detention of an individual is in violation of a fundamental right." *In re Robison*, 107 Idaho 1055, 1057, 695 P.2d 440, 442 (Ct. App. 1985). An in-state prisoner may file a petition for writ of habeas corpus to request that a court inquire into state or federal constitutional questions concerning conditions of confinement, the revocation of parole, miscalculation of a sentence, loss of good time credits, or detainers lodged against the prisoner. I.C. §§ 19-4203(2)(a)-(e). "Habeas corpus should not be

used as a substitute for, or in addition to, a direct appeal of a criminal conviction or proceeding” under Idaho Criminal Rule 35 or the Uniform Post-Conviction Procedures Act. I.C. § 19-4203(4).

The decision to issue a writ of habeas corpus is a matter within the discretion of the court. *Johnson v. State*, 85 Idaho 123, 127, 376 P.2d 704, 706 (1962); *Brennan v. State*, 122 Idaho 911, 914, 841 P.2d 441, 444 (Ct. App. 1992). When we review an exercise of discretion in a habeas corpus proceeding, we conduct a three-tiered inquiry to determine whether the lower court rightly perceived the issue as one of discretion, acted within the boundaries of such discretion, and reached its decision by an exercise of reason. *Brennan*, 122 Idaho at 914, 841 P.2d at 444; *Sivak v. Ada County*, 115 Idaho 762, 763, 769 P.2d 1134, 1135 (Ct. App. 1989). If a petitioner is not entitled to relief on an application for a writ of habeas corpus, the decision by the petitioned court to dismiss the application without an evidentiary hearing will be upheld. *Brennan*, 122 Idaho at 917, 841 P.2d at 447. When a court considers matters outside the pleadings on an I.R.C.P. 12(b)(6) motion to dismiss, such motion must be treated as a motion for summary judgment. *Hellickson v. Jenkins*, 118 Idaho 273, 276, 796 P.2d 150, 153 (Ct. App. 1990).

III.

ANALYSIS

Lightner made several claims in his amended petition. Specifically, he asserted that: (1) the VSP designation violated his plea agreement; (2) the respondents deprived him of all materials used against him during the VSP classification process in violation of his due process rights; (3) Lightner’s parole officer committed retaliatory acts by disclosing his conviction and VSP status while he was on parole causing him to move repeatedly, refusing to help him find housing, attempting to violate Lightner’s parole to lessen the parole officer’s caseload, and holding him to a higher standard; (4) the respondents deprived Lightner of his constitutional rights by relying upon uncharged conduct and his VSP classification in revoking parole; (5) timely parole was denied based upon the unfounded VSP classification, uncharged conduct, and falsified disciplinary reports; and (6) the respondents had not provided sufficient training to unidentified subordinates resulting in Lightner being subjected to cruel and unusual punishment. While not clearly stated as one of his claims, Lightner made reference to the denial of credit for time served for the period after he absconded until he was returned to the United States. The prayer for relief requested that the district court declare that Lightner’s constitutional rights had

been violated, remove his VSP designation, and release him from custody. In the alternative, he requested that he be reinstated on parole without the VSP designation, credited with time served, be excused from wearing a GPS monitor, and that his remaining parole be limited to one year.

The district court (after determining that the state's response was timely) granted the state's motion to dismiss. Specifically, the district court dismissed the Board and the "Doe" respondents as improperly named parties under I.C. § 19-4205(5). In addressing the relief sought by Lightner, the district court recognized that relief in habeas corpus cases is limited to claims that state or federal constitutional rights have been violated relative to conditions of confinement, the revocation of parole, miscalculation of a sentence, the loss of good time credits, or a detainer lodged against the prisoner. The district court ruled that it was without authority to remove Lightner's VSP status in a habeas corpus proceeding. Concluding that subject matter jurisdiction in habeas corpus cases is limited, the district court granted the state's motion to dismiss to the extent Lightner sought removal of the VSP designation, reinstatement of parole, changes in conditions of parole (removal of the GPS monitor), a change in the length of parole, and release from custody.¹ The district court then addressed the doctrine of res judicata as it related to the remainder of Lightner's claims. The district court granted the state's motion to dismiss as to Lightner's first, second, third, fourth, and fifth claims, finding that Lightner had raised the same claims in prior cases. Only Lightner's sixth claim, that he was subjected to cruel and unusual punishment because of poor training of unidentified IDOC personnel, remained. The district court dismissed Lightner's sixth claim finding that, under I.R.C.P. 9(b), Lightner had failed to state any factual basis for the claim.

On appeal, Lightner asserts that: (1) the VSP designation violated his plea agreement and led to a change in the conditions of his confinement; (2) his VSP designation was based on materials that were not disclosed in violation of his due process rights; (3) his *ex post facto* rights were violated by the VSP designation; (4) the district court erred in denying his motion for default judgment; (5) the revocation of his parole was unjustified; and (6) the district court erred in granting the state's motion to dismiss. Essentially, there are only three issues on appeal: (1) whether the district court erred in denying Lightner's motion for default judgment;

¹ The district court also correctly noted that, in the event a sentence has been miscalculated and the prisoner is entitled to be released but for the miscalculation, the court may then order the prisoner's release. I.C. § 19-4214.

(2) whether the district court erred in dismissing the habeas corpus petition; and (3) whether Lightner's constitutional rights were violated by revocation or denial of his parole. We address these issues in turn.

A. Denial of Motion for Default Judgment

Lightner argues that the district court erred in denying his motion for default judgment. The grant or denial of an application for the entry of default judgment rests within the discretion of the trial court. *Johnson v. State*, 112 Idaho 1112, 1114, 739 P.2d 411, 413 (Ct. App. 1987). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the court reached its decision by an exercise of reason. *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

In his motion for default judgment, Lightner asserted that the state failed to timely respond to his petition for writ of habeas corpus. On May 18, 2009, the district court entered a written order for response requiring the state to respond to Lightner's habeas corpus petition within thirty days. The order directed that "the Clerk of the Court mail a copy of the Petition and this order to the Respondent or the Respondent's counsel, if known." Attached to the order was a document entitled "CERTIFICATE OF MAILING." This document was signed by the deputy clerk. The document stated: "I hereby certify that on 5/18, 2009, I have delivered a true and accurate copy of the foregoing document to the following parties in the method indicated below." Immediately below that statement, the Deputy Attorney General and Lightner were both listed along with their mailing addresses. However, there was no statement that the document was mailed. The district court, based upon the "Certificate of Mailing" and the order requiring the petition to be served by mail, found that the petition had been served on the parties by mail on May 18, 2009. This decision was well within the boundaries of the court's discretion. The state's response was filed on June 22, 2009. Under I.R.C.P. 6(e)(1) the response would have been due on June 20; however, June 20, 2009, was a Saturday. Therefore, under I.R.C.P. 6(a), the response was not due until June 22 (the following Monday). The response was timely. We hold that the district court did not err in denying Lightner's motion for default judgment.

B. Dismissal of Petition

Lightner's claims center upon his VSP classification. In a habeas corpus case, a court's authority is limited to state or federal constitutional questions concerning conditions of confinement, the revocation of parole, miscalculation of a sentence, loss of good time credits, or detainers lodged against the prisoner. I.C. §§ 19-4203(2)(a)-(e). Therefore, Lightner's claims that his VSP designation violated his plea agreement, his due process rights, and constitutional prohibitions against *ex post facto*² laws are not cognizable in a habeas corpus case unless he can show that the classification resulted in a change in conditions of confinement, the revocation of parole, miscalculation of a sentence, loss of good time credits, or a detainer lodged against him. Lightner couches some of his claims in terms of conditions of confinement but he has not shown how his VSP designation has had any effect on conditions of confinement. In addition, Lightner has availed himself of a direct appeal of his VSP designation and that designation was upheld. *See Lightner*, 142 Idaho 324, 127 P.3d 227. The district court did not err in dismissing Lightner's claims challenging his VSP designation.

Lightner's claims include an assertion that his constitutional rights were violated when his parole was revoked because the Commission for Pardons and Parole considered his assertedly unconstitutional VSP designation and uncharged conduct in revoking his parole. This claim may appropriately be brought in a petition for habeas corpus. Idaho Code Section 19-4213(1) provides:

If a court finds that an in-state prisoner's constitutional rights have been violated during the course of revocation of his parole, the court may, upon specific findings of fact and conclusions of law, enter an order directing that the parole revocation proceedings be reconvened. The order shall identify the constitutional violation which occurred and direct that the violation be cured.

Thus, a writ of habeas corpus may be used to challenge the revocation of parole or the violation of a parolee's rights during the course of parole revocation proceedings. *Matthews v. Jones*, 147 Idaho 224, 227-28, 207 P.3d 200, 203-04 (Ct. App. 2009).

Lightner reasons that, because his due process rights were violated in the determination of his VSP status and his VSP status was then considered by the Commission in revoking his

² Our Supreme Court has recently rejected a claim that a VSP designation violated constitutional prohibitions against *ex post facto* laws ruling that the purpose of the Sex Offender Registration Act is not punitive but remedial and that registration is not additional punishment nor does it extend a sentence. *Smith v. State*, 146 Idaho 822, 203 P.3d 1221 (2009).

parole, his due process rights were violated when his parole was revoked. Lightner also relies upon *Smith v. State*, 146 Idaho 822, 203 P.3d 1221 (2009) which holds that the statutory scheme for designation as a VSP denies procedural due process by failing to provide notice and a meaningful opportunity to be heard, including disclosure of materials relied upon by the Board. *Smith*, 146 Idaho at 833, 203 P.3d at 1232. In habeas corpus proceedings, res judicata applies to issues actually brought and heard by a petitioner in a prior case. *Starkey v. State*, 91 Idaho 74, 76, 415 P.2d 717, 719 (1966). Thus, a petitioner is not, as a matter of right, entitled to a subsequent writ unless he or she can present some new issue of fact or law upon which the petitioner has not had a hearing. *Coffelt v. State*, 92 Idaho 235, 237, 440 P.2d 355, 357 (1968).

Lightner's claims regarding his VSP classification were addressed in his prior habeas case. See *Lightner v. Blades, et al.*, Ada County District Ct. Case No. CV-HC-200616658. In that case, the court, in dismissing the habeas case on res judicata grounds, noted that Lightner had previously litigated and appealed his VSP classification in *Lightner v. State*, 142 Idaho 324, 127 P.3d 227 (Ct. App. 2005). In that case, Lightner challenged the VSP designation, and the district court summarily affirmed the VSP classification. Lightner appealed that decision. Lightner challenged the accuracy of his VSP screening test, specifically asserting that his score had been miscalculated and providing the score he felt should have been given. He also asserted that the VSP classification did not fit his case. This Court determined that "Lightner did not submit or identify evidence that corroborated his conclusory allegation of miscalculation." *Lightner*, 142 Idaho at 327, 127 P.3d at 230. We held that the test result was immaterial because multiple other sources supported the district court's determination that Lightner was a high risk to reoffend. We noted that Lightner did not dispute his lengthy history of sex crimes, and we related that history in some detail. We observed that Lightner's justifications for sexually abusing his victims, along with his past record of multiple sexual offenses and unsuccessful treatment, contribute to the substantial evidence of a high risk of committing a sexual reoffense or engaging in predatory sexual conduct." *Lightner*, 142 Idaho at 328, 127 P.3d at 231. We then held that the district court did not err in designating Lightner as a VSP without convening a fact-finding hearing. Lightner's long history of sex crimes, his continuing justification for his conduct and his unsuccessful treatment caused him to be designated as a VSP, not any undisclosed information. This case differs from *Smith* in that Lightner's previous appeal before this Court provided him a meaningful opportunity to be heard and cured any procedural defects

in the Board's statutory scheme. Lightner has not demonstrated a violation of his constitutional rights under *Smith*. Because Lightner's due process claims were heard and decided in his prior habeas case and in his VSP appeal, his claims are barred by the doctrine of res judicata.

As to Lightner's claim that he has been *denied* parole (after his parole was revoked), we note that there is no constitutionally protected right to parole. *See Hays v. Craven*, 131 Idaho 761, 764, 963 P.2d 1198, 1201 (Ct. App. 1998). The United States Supreme Court has held that no constitutional right attaches to the mere possibility of conditional liberty. *See Greenholtz v. Inmates of Nebraska Penal & Corr.*, 442 U.S. 1, 7 (1979); *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972). The Idaho Supreme Court has concluded that Idaho statutes do not provide a legitimate expectation of parole, but merely the possibility thereof. *See Izatt v. State*, 104 Idaho 597, 600, 661 P.2d 763, 766 (1983). Therefore, Lightner is not entitled to a writ of habeas corpus on this basis.

C. Other Claims not Raised on Appeal

In his petition, Lightner claimed that his parole officer engaged in retaliatory acts against him, that the parole hearing officer deprived him of a fair consideration of parole, and that the prison condoned Lightner's mistreatment at the hand of prison staff. Lightner failed to raise any of these arguments on appeal. A party waives an issue on appeal if either argument or authority is lacking. *Powell v. Sellers*, 130 Idaho 122, 128, 937 P.2d 434, 440 (Ct. App. 1997). Therefore we will not address the district court's dismissal of these claims.

III.

CONCLUSION

We hold that the district court did not err in denying Lightner's motion for default judgment because the state's response was timely. We also hold that the district court did not err in dismissing Lightner's petition for habeas corpus relief because Lightner failed to demonstrate that his due process rights were violated in the determination of his VSP status, because his claim his VSP status was based on uncharged conduct was barred by res judicata, and because he has no constitutional right to parole. We do not address the other claims asserted in Lightner's petition because he failed to raise them on appeal. Accordingly, the district court's order dismissing Lightner's petition for writ of habeas corpus is affirmed. Costs, but not attorney fees, are awarded to respondents on appeal.

Chief Judge GRATTON and Judge LANSING, **CONCUR.**

