STATE OF MINNESOTA

IN COURT OF APPEALS

In re April Sky Weyaus, Petitioner,

State of Minnesota,

Respondent,

vs.

April Sky Weyaus,

Petitioner (A23-1565).

In re Emilio Andres Trevino, Petitioner,

State of Minnesota,

Respondent,

vs.

Emilio Andres Trevino,

Petitioner (A23-1570).

SPECIAL TERM ORDER[1]

#A23-1565
#A23-1570

Considered and decided by Segal, Chief Judge; Slieter, Judge; and Larson, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE FOLLOWING REASONS:

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 P. 136.01, subd. 1(c), this order is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Petitioner April Sky Weyaus (A23-1565) seeks prohibition to prevent a Mille Lacs County District Court judge from enforcing an October 13, 2023 amended sentencing order that (a) requires her to comply, as a condition of probation, with a supplemental order prohibiting her from voting or registering to vote until her civil rights have been restored and (b) declares 2023 Minn. Laws ch. 12, § 1, amending Minn. Stat. § 201.014, subd. 2a, to be unconstitutional.

Petitioner Emilio Andres Trevino (A23-1570) seeks prohibition to prevent the same district court judge from enforcing an October 12, 2023 sentencing order requiring him to comply, as a condition of probation, with an identical supplemental order.

Consideration of the petitions has been consolidated. The Minnesota Attorney General has intervened and filed a memorandum in support of prohibition. The Mille Lacs County Attorney's Office has indicated that it is not participating. The district court judge has not filed a response in opposition to the petition. ACLU of Minnesota (ACLU-MN) and the Minnesota Voters Alliance (MVA) have filed memoranda as amici curiae.

The petitioners must meet three requirements for a writ of prohibition to issue from this court: "(1) an inferior court or tribunal must be about to exercise judicial or quasi-judicial power; (2) the exercise of such power must be unauthorized by law; and (3) the exercise of such power must result in injury for which there is no adequate remedy." *State v. Turner*, 550 N.W.2d 622, 625 (Minn. 1996) (quotation omitted). There is no dispute that the district court exercised judicial power by sua sponte issuing supplemental orders

declaring section 201.014, subdivision 2a, unconstitutional and prohibiting petitioners from voting or registering to vote as conditions of their probation.

Petitioners have also shown that they do not have an adequate remedy. Petitioners have a right to appeal their sentences and argue that the probation condition prohibiting them from voting or registering to vote "is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court." Minn. Stat. § 244.11, subd. 2(b) (2022). Although an appeal is an available remedy, it is not an adequate remedy because it "would in all probability not be heard for several months," and, with an election less than a week away, any victory would be "an empty one" for petitioners. *Juster v. Grossman*, 38 N.W.2d 832, 837 (Minn. 1949). Petitioners also have a right to make a motion in the district court to correct their sentences under Minn. R. Crim. P. 27.03, subd. 9. But this may be a "futile" remedy because it appears from the record that the district court judge is not likely to change his mind, and requiring petitioners to make motions in the district court would only further delay petitioners' efforts to obtain review of the district court's order. *See State ex rel. Minn. Nat'l Bank of Duluth v. Dist. Ct.*, 262 N.W. 155, 157 (Minn. 1935) (stating that prohibition will lie to "prevent futile and unavoidable delay"). Petitioners have shown that they do not have an adequate, ordinary remedy.

The final question is whether the district court's order is unauthorized by law. Petitioners and the attorney general argue that the district court exceeded its lawful authority by independently raising and deciding an issue involving the constitutionality of

a statute without the issue being raised by a party and without giving the parties notice and an opportunity to be heard. They argue that the district court violated the principle of party presentation, which recognizes that parties raise the issues that matter to them, and courts perform "the role of neutral arbiter" and "should not" look "for wrongs to right," but "wait for cases to come to [them]." *Greenlaw v. United States*, 554 U.S. 237, 244 (Minn. 2008). We agree.

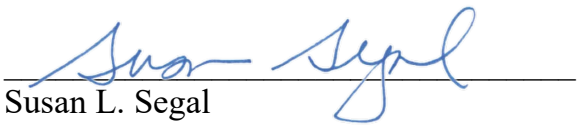
Nothing in Minn. R. Crim. P. 27.03 authorizes a district court judge to issue a supplemental sentencing order, after a sentencing hearing and without prior notice to the parties. The supplemental sentencing orders also appear to exceed the district court's statutory sentencing authority. The judicial branch has no inherent authority to impose terms or conditions of sentencing for a criminal act. *State v. Osterloh*, 275 N.W.2d 578, 580-81 (Minn. 1978). The legislature grants district courts the authority to sentence a defendant to imprisonment, to stay execution or imposition of sentence and place the defendant on probation, and to determine the conditions of probation. Minn. Stat. §§ 609.10, subd. 1(a), .135 (2022); *State v. Ornelas*, 675 N.W.2d 74, 80 (Minn. 2004). But a sua sponte supplemental sentencing order declaring a legislative act unconstitutional is outside the sentencing authority granted to district courts by the legislature.

Although petitioners and the attorney general advance additional arguments that would support a grant of a writ of prohibition, it is unnecessary to address them in light of our conclusion that the district court had no authority to declare a statute unconstitutional, sua sponte, in a supplemental sentencing order.

IT IS HEREBY ORDERED: The petitions for writs of prohibition are granted.

Dated: November 2, 2023

BY THE COURT



Susan L. Segal
Chief Judge