

NOT DESIGNATED FOR PUBLICATION

No. 126,052

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CALEB KANATZAR,  
*Appellant,*

v.

DAN SCHNURR, WARDEN,  
*Appellee.*

MEMORANDUM OPINION

Appeal from Butler District Court; JOHN E. SANDERS, judge. Opinion filed September 22, 2023.  
Affirmed.

*Kristen B. Patty*, of Wichita, for appellant.

*Fred W. Phelps, Jr.*, deputy chief legal counsel, Kansas Department of Corrections, for appellee.

Before ARNOLD-BURGER, C.J., GREEN and HILL, JJ.

PER CURIAM: When a food package of spicy dried beef, shredded chicken breast, and coffee sent to him by his mother never made it to him, prisoner Caleb J. Kanatzar sought a writ of habeas corpus, claiming that the Hutchinson Correctional Facility deprived him of personal property without due process of law. This is an appeal of the district court order summarily dismissing his petition. We affirm the dismissal because the great writ is an extraordinary legal remedy and is not to be used for the recovery of monetary loss.

*Kanatzar's mother sends a food parcel.*

In July 2021, Kanatzar's mother ordered a union supply food package valued at \$75 to be delivered to him while he was an inmate at Hutchinson Correctional Facility. Kanatzar never received the package. When Kanatzar inquired about the missing package, he was told to "be patient" while the prison staff looked for it. In late November 2021, the Kansas Department of Corrections Central Office informed Kanatzar's mother that the package had been delivered to the prison and suggested that Kanatzar file a property loss claim.

Following this advice, Kanatzar filed his property loss claim on December 14, 2021. Several days later, Kanatzar was told that the receipt for the package showed that it was delivered to the facility but did not have Kanatzar's signature. He finally learned later that his property loss claim was disapproved by the Deputy Secretary of Facilities Management on February 15, 2021.

Before he became aware of the disapproval of his property loss claim, Kanatzar petitioned for a writ of habeas corpus under K.S.A. 60-1501 without any assistance from legal counsel. In the petition, Kanatzar alleged that Hutchinson Correction Facility had violated his due process rights under the Fourteenth Amendment to the United States Constitution because he believed the investigation deadline had lapsed and he had exhausted his administrative remedies. After receiving the disapproval of his property loss claim, Kanatzar amended his petition to advise the Reno District Court of additional facts gathered from the investigation report. Kanatzar alleged that he was deprived of his property in violation of the Fourteenth Amendment because the staff's negligence and failure to follow proper procedure caused the loss of his package.

After Kanatzar notified the Reno County District Court that he had been moved to the El Dorado Correctional Facility, his case was transferred to the Butler County District Court.

That court summarily dismissed Kanatzar's petition for lack of jurisdiction. It concluded that he failed to state a claim for habeas corpus relief because (1) monetary claims are not "conditions of confinement" cognizable through a writ of habeas corpus, (2) a dispute over presumably lost property and monetary loss due to claimed negligence did not rise to a constitutional level violative of a prisoner's due process rights, and (3) Kanatzar's mother suffered the loss, not Kantazsar.

If a district court determines from the face of a petition and any attached exhibits that the petitioner is entitled to no relief, it may deny the motion summarily without issuing a writ or ordering the respondents to file an answer. K.S.A. 2022 Supp. 60-1503(a). In turn, because we are in just as good a position as the district court to determine whether a plaintiff is entitled to no relief when a district court summarily dismisses a K.S.A. 60-1501 petition without issuing a writ, we will exercise unlimited review of a summary dismissal. *Johnson v. State*, 289 Kan. 642, 649, 215 P.3d 575 (2009).

*A writ of habeas corpus is an extraordinary remedy.*

To state a claim for relief under K.S.A. 60-1501 and avoid summary dismissal, a petition must allege "shocking and intolerable conduct or continuing mistreatment of a constitutional stature." *Johnson*, 289 Kan. at 648. The requirement that the defendant

must establish shocking and intolerable conduct derives from the Fourteenth Amendment to the United States Constitution. This Amendment prohibits the States from depriving persons of "life, liberty, or property, without due process of the law." U.S. Const. amend. XIV, § 1; see *Johnson*, 289 Kan. at 649.

A review of the law reveals how unique this remedy is. Habeas corpus is an extraordinary legal remedy, and it should not be used when relief may be obtained by ordinary procedure. 39 C.J.S. Habeas Corpus § 6. In federal court, habeas corpus is not an appropriate or an available remedy for a state prisoner seeking damages. *Wolff v. McDonnell*, 418 U.S. 539, 554, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974). Neither is it a proper remedy for presenting a prisoner's claim that his money has been wrongfully taken and retained by a penal institution. *Konigsberg v. Ciccone*, 285 F. Supp. 585, 598 (W.D. Mo. 1968), *aff'd* 417 F.2d 161 (8th Cir. 1969). When dealing with this writ and its application to the conditions of a prisoner's confinement, courts must focus on prison conditions and treatment. Our State Supreme Court agrees.

In *Foster v. Maynard*, 222 Kan. 506, 513, 565 P.2d 285 (1977), some prisoners were seeking return of some "forced savings" that had been taken from their prison accounts because of a law at that time that ordered a withdrawal of five cents a day for every day the prisoner was confined. And then at the end of the prisoners' sentence the total amount withdrawn would be turned over to the prisoner upon release.

In *Maynard* the court held:

"We are not disposed to expand 'conditions of confinement' cognizable under habeas corpus to encompass the instant claim alleging wrongful retention of money. We therefore hold the district court correctly ruled that habeas corpus was not a proper proceeding to raise the issue of crediting the appellants' accounts with forced savings accrued under provisions of K.S.A.1974 Supp. 75-

5211. Because this action is not jurisdictionally cognizable under habeas corpus, we do not reach the merits of appellants' claim."

We see no difference between that forced savings claim and Kanatzar's claim for the food or the \$75. Following the holding in *Maynard*, we will not expand our review of a prisoner's confinement to a return of money. The district court was correct.

Affirmed.