STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2128

In the Matter of the Civil Commitment of: James Allen Sleen

Filed October 14, 2019
Affirmed
Connolly, Judge

Otter Tail County District Court
File No. 56-PR-13-1236

James A. Sleen, Moose Lake, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Angela H. Kiese, Assistant Attorney General, St. Paul, Minnesota; and

Michelle Eldien, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Connolly, Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant, pro se, challenges the district court's denial of appellant's motion to withdraw his stipulation to commitment to the Minnesota Sex Offender Program (MSOP) as a sexually dangerous person (SDP), arguing that he was deprived of the effective assistance of counsel and entitled to an evidentiary hearing and to withdrawal under Minn. R. Crim. P. 20.01, subd. 6. Because appellant's motion to withdraw was untimely, he has

not shown that his counsel was ineffective, he was not entitled to an evidentiary hearing, and Minn. R. Crim. P. 20.01, subd. 6, does not apply to stipulation withdrawal, we affirm.

FACTS

Appellant James Sleen, now 42, pleaded guilty to second-degree criminal sexual conduct in regard to M.W., then a five-year-old female, in 2001, and in regard to G.L., then an eleven-year-old male, in 2002.

In 2013, respondent Otter Tail County filed a petition to commit appellant as an SDP. He stipulated to submitting the matter on the record, and the district court filed an order committing him as an SDP.[1] After a nonmandatory review hearing in 2014, his commitment was made indeterminate, and he did not challenge that decision.

Four years later, in 2018, appellant filed a "motion to withdraw stipulation of SDP." Counsel was appointed for him. Following a hearing, his motion was denied. He challenges the denial.

D E C I S I O N

1. Untimeliness of Motion to Withdraw

Appellant's "motion to withdraw stipulation of SDP" on the basis of ineffective assistance of counsel was actually a motion for relief from judgment, as provided under Minn. R. Civ. P. 60.02. *See In Re Lonergan*, 811 N.W.2d 635, 642 (Minn. 2012) (holding that, because "the commitment act does not provide any procedures for a patient indeterminately committed as an SDP or SPP to raise . . . claims such as ineffective

[1] Contrary to explicit and implicit statements in his brief, appellant did not stipulate to commitment as an SDP but stipulated only to submitting the matter on the written record.

assistance of counsel[,]" those claims may be brought under Rule 60.02). Motions for relief based on claims of "[m]istake, inadvertence, surprise, or excusable neglect," Minn. R. Civ. P. 60.02 (a), must be made "not more than one year after the judgment, order, or proceeding was entered or taken. . . ." Minn. R. Civ. P. 60.02. The denial of a Rule 60.02 motion is reviewed for an abuse of discretion. *Charson v. Temple Israel*, 419 N.W.2d 488, 490 (Minn. 1988).

Appellant's motion was brought more than four years after the order for his indeterminate commitment. Thus, it was not timely, and the district court did not abuse its discretion in denying it on that basis.

In the interest of completeness, we address the other issues raised on appeal.

2. Ineffective Assistance of Counsel

Appellant's attorney at the time of his indeterminate commitment in 2014 was charged with controlled-substance offenses in February 2018. Like the attorney's other former clients who were similarly situated, appellant filed a motion to withdraw his stipulation based on ineffective assistance of counsel. *See, e.g.*, *In re Johnson*, 931 N.W.2d 649, 656 (Minn. App. 2019) (holding that individual committed as SDP and SPP had no constitutional right to appointed counsel on Rule 60.02 motion for a new trial and affirming denial of motion as untimely and deficient on the merits), *review denied* (Minn. Sept. 17, 2019); *In re Dean*, No. A19-0122, 2019 WL 3407166 at *2 (Minn. App. July 29, 2019) (affirming denial of motion to withdraw stipulation to commitment as an SDP because it was untimely), *pet. for review filed* (Minn. Aug. 19, 2019); *In re Wilson*, No A19-0163, 2019 WL 3294078 at *2-3 (Minn. App. July 22, 2019) (affirming denial of Rule 60.02

motion for a new trial because individual committed as both SDP and sexual psychopathic personality "failed to present even a fact question as to the adequacy of his former attorney's performance" and "ha[d] not demonstrated that any shortfalls in his attorney's performance negatively affected the outcome of the commitment trial"); *In re Newman*, No. A18-1691, 2019 WL 3293793 at *2-3 (Minn. App. July 22, 2019) (affirming denial of Rule 60.02 motion for a new trial because it was untimely and because ineffective-assistance claim lacked merit).

These cases concluded that the failure to show any connection between the attorney's arrest in February 2018 and the attorney's condition at the time he was representing these clients several years earlier was fatal to the merits of their ineffective-assistance claims. The same conclusion applies to appellant in this case.

3. Evidentiary Hearing

An evidentiary hearing is necessary only if there is a factual dispute that the district court must resolve in order to rule on the motion. *In re Moen*, 837 N.W.2d 40, 46-47 (Minn. App. 2013), *review denied* (Minn. Oct. 13, 2013). Appellant does not explain what factual dispute had to be resolved in order for the district court to deny his untimely motion to withdraw his alleged stipulation to commitment as SDP. "The matter of vacating a stipulation rests largely in the discretion of the [district] court, and its action will not be reversed absent a showing that the court acted so arbitrarily as to constitute an abuse of that discretion." *Anderson v. Anderson*, 225 N.W.2d 837, 840 (Minn. 1975). Thus, appellant has not shown that the district court abused its discretion in denying his motion.

4. Application of Criminal Plea-Agreement Standard

Appellant finally argues that the standard for withdrawing a guilty plea set forth in Minn. R. Crim P. 20.01, subd. 6, should apply to his motion to withdraw his agreement to stipulate to a trial on the record. But civil-commitment proceedings are not criminal in nature and are governed by a standard for stipulation withdrawal, not plea withdrawal. *In re Rannow*, 749 N.W.2d 393, 399 (Minn. App. 2008). A stipulation cannot generally be withdrawn unless both parties agree to the withdrawal, *id.* at 396; here, respondent has not agreed.

Moreover, *Rannow* supports the denial on the merits of appellant's motion to withdraw. In that case, "[the a]ppellant's response in the detailed exchanges that [he] had with both his attorney and the district court support[ed] the district court's determination that [the] appellant understood the advantages and disadvantages of the stipulation." *Id.* at 399. The district court quoted this passage and noted that:

> [appellant's attorney] went through each provision of the stipulation with [appellant] prior to the hearing and went over some of them on the record. . . . [Appellant] told the court he wished the court [to] accept the stipulated agreement, that he had sufficient time to discuss his case with his attorney; fully understood the facts of his case; and, most pertinently, that he was satisfied with his attorney's representation of him. [He] agreed that his attorney took sufficient time to speak with him about his case, was fully informed as to the facts of the case, informed [appellant] of his various defenses, represented all of [appellant's] interests, and fully advised [appellant.]

The guilty-plea withdrawal standard is irrelevant to this case.

Affirmed.