STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0340

In the Matter of the Civil Commitment of: Edward Everett Urbanek.

Filed November 12, 2019
Affirmed
Larkin, Judge
Concurring specially, Rodenberg, Judge

Otter Tail County District Court
File No. 56-P7-04-001142

Jill Avery, Templeman Law PLLC, Plymouth, Minnesota (for appellant Urbanek)

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

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

Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and Larkin, Judge.

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

LARKIN, Judge

Appellant challenges the district court's denial of his motion for relief from his indeterminate commitment as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP). He argues that the underlying judgment for commitment

is void and that he received ineffective assistance of counsel in the underlying civil-commitment proceeding. We affirm.

FACTS

In June 2004, respondent Otter Tail County (the county) petitioned to civilly commit appellant Edward Everett Urbanek as an SDP and an SPP. The district court appointed counsel to represent Urbanek in the commitment proceeding and held a three-day trial on the county's petition in September 2004.[1] In November 2004, the district court committed Urbanek as an SDP and an SPP under Minn. Stat. § 253B.02, subds. 18b, 18c (2004).[2] In April 2005, the district court held a 60-day review hearing under Minn. Stat. § 253B.18, subd. 2 (2004). In June 2005, the district court indeterminately committed Urbanek as an SDP and an SPP. Urbanek appealed, represented by the same court-appointed attorney who represented him at the commitment trial. *In re Civil Commitment of Urbanek*, No. A05-1633, 2006 WL 44358, at *1 (Minn. App. Jan. 10, 2006), *review denied* (Minn. Mar. 28, 2006). This court affirmed, and the supreme court denied review. *Id.* at *1, *4.

[1] Although the relevant commitment statute refers to a "hearing on the commitment petition," and not a "trial," we refer to the three-day hearing as a trial, consistent with the parties' briefs, as well as the rules and caselaw discussed below. *See, e.g.*, Minn. Stat. § 253B.08, subd. 1 (2004) (providing time limits for holding a "hearing on the commitment petition").

[2] In 2013, the legislature amended the Minnesota Commitment and Treatment Act by removing provisions regarding SDP and SPP commitments from chapter 253B and moving them to a new chapter 253D, entitled the "Minnesota Commitment and Treatment Act: Sexually Dangerous Persons and Sexual Psychopathic Personalities." 2013 Minn. Laws ch. 49, §§ 1-22, at 210-31.

In April 2018, 12 years after his appeal, Urbanek moved the district court, pro se, for a new trial under rules 59.03[3] and 60.02 of the Minnesota Rules of Civil Procedure, claiming that he received ineffective assistance of counsel in the commitment proceeding. Urbanek noted that in 2018, his court-appointed attorney in the commitment proceeding was charged with several felonies, "including but not limited to the sale of methamphetamine, marijuana and other drugs." He argued that those circumstances were "relevant, admissible, and likely to have [had] an effect on the result of [his] civil commitment proceedings." Specifically, Urbanek asserted that his "attorney was under the influence of a mood altering substance, and therefore could not . . . do his duty as an attorney." (Emphasis omitted.)

In June 2018, the district court appointed counsel to represent Urbanek in the proceeding on his new-trial motion, reasoning that "the balance of interests in this matter favors appointment of an attorney on [his] behalf." In doing so, the district court noted that Urbanek's claim was "for ineffective assistance of counsel, which is a claim legitimately brought before the [district] court" and that "the claim cites new evidence in the form of a criminal complaint brought against the trial attorney."

In July 2018, Urbanek filed an "Amended Notice of Motion and Motion for New Trial Pursuant to Rule 60.02(f)." Urbanek again asserted that his commitment attorney ineffectively represented him in his civil-commitment proceeding and that counsel's errors were "highly likely . . . a result of his drug and alcohol addiction."

[3] Urbanek later withdrew his request for relief under rule 59.03, and it is not an issue in this appeal.

In September 2018, Urbanek filed a "Second Amended Notice of Motion and Motion for New Trial Pursuant to Rule 60.02(d) and (f)." Urbanek argued that his "indeterminate civil commitment is void" under Minn. R. Civ. P. 60.02(d). Urbanek also reasserted his ineffective-assistance-of-counsel claim as an alternate ground for relief under Minn. R. Civ. P. 60.02(f). The county responded, in part, that the district court should reject Urbanek's motion as untimely.

After a hearing on Urbanek's motion, the district court made the following findings regarding the circumstances that led to the county's petition for commitment. Urbanek was born in 1957. In 1985, he was convicted in Wyoming of four sexual offenses against children and sent to prison. He was released from custody in 1989 and later moved to Minnesota. In 1993, he pleaded guilty to a sexual offense against a child in Hubbard County. Urbanek began a sex-offender treatment program, but he was discharged from the program and sent to prison in 1995. In 1998, he was released from prison with a ten-year period of conditional release. In 2004, he was taken into custody on an alleged conditional-release violation, but it was determined that his ten-year conditional release period was unlawful and that he should have received a five-year conditional release period. Because the five-year conditional release period had expired, Urbanek was immediately released from prison without ordinary end-of-confinement procedures.

The Department of Corrections (DOC) notified the Hubbard County Attorney that Urbanek had been released without review for possible civil commitment as an SDP or an SPP. It appears that the Hubbard County Attorney obtained Urbanek's confidential data and records by court order. The Hubbard County Attorney hired two experts to review

those records and make a recommendation concerning the possibility of committing Urbanek as an SDP or SPP. Based on the experts' recommendations and Urbanek's then residence in Otter Tail County, the Hubbard County Attorney forwarded Urbanek's records to the Otter Tail County Attorney, who commenced commitment proceedings in 2004.

The district court denied Urbanek's motions for relief from judgment under rule 60.02 on the merits, assuming without deciding that the motion was timely. This appeal followed.

D E C I S I O N

I.

Minn. R. Civ. P. 60.02 provides that "[o]n motion and upon such terms as are just, the court may relieve a party . . . from a final judgment . . . , order, or proceeding and may order a new trial or grant such other relief as may be just" and lists various grounds for relief in paragraphs (a) through (f). Rule 60.02 provides that a "motion shall be made within a reasonable time, and for reasons (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken." A district court's denial of a rule 60.02 motion is reviewed for an abuse of discretion. *In re Civil Commitment of Johnson*, 931 N.W.2d 649, 655 (Minn. App. 2019), *review denied* (Minn. Sept. 17, 2019).

The county contends that "Urbanek's motions were grossly untimely" because "[a]ll of [his] claims were based on circumstances occurring before or at his trial in 2004." Urbanek counters that "[a]lthough [his] motion came thirteen years after [his] indeterminate commitment, the compelling nature of commitment proceedings provided the basis for the court to consider [his] arguments in the interests of justice, rather than

dismiss on technical grounds." Although the issue was raised, the district court did not decide whether Urbanek's rule 60.02 motion was timely.

Generally, this court only reviews issues that were "presented to and considered by the [district] court in deciding the matter before it." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). However, "this court may consider issues that have been presented to but not decided by the district court when the facts are undisputed and both parties have briefed the issue." *Gallaher v. Titler*, 812 N.W.2d 897, 901 (Minn. App. 2012), *review denied* (Minn. July 17, 2012). Because the timing issue was presented to the district court, the facts are undisputed, and the parties have briefed the issue, we address it.

In district court, Urbanek cited paragraphs (d) and (f) of rule 60.02 as grounds for relief.[4] Under rule 60.02(d), a court may grant relief because "[t]he judgment is void." "A void judgment is one where the court lacks jurisdiction over the subject matter or over the parties." *Zions First Nat'l Bank v. World of Fitness, Inc.*, 280 N.W.2d 22, 25 (Minn. 1979) (quotation omitted). Under rule 60.02(f), a court may grant relief based on "[a]ny other reason justifying relief from the operation of the judgment." "Clause (f) of Rule 60.02 is a residual clause, designed to afford relief only under exceptional circumstances not addressed by clauses (a) through (e)." *Johnson*, 931 N.W.2d at 655 (quotation omitted). Again, under rule 60.02 the "motion shall be made within a reasonable time, and for reasons (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered

[4] Although Urbanek cited rule 60.02(b) in his initial motion for new trial, he did not rely on that ground in his amended and second amended motion in the district court and does not rely on it on appeal.

or taken." "The residual clause is not intended to extend the time limit for granting relief under the other clauses of Rule 60.02." *Id.* (quotation omitted).

Urbanek relied on rule 60.02(d) for his claim that the civil-commitment judgment is void. What constitutes a reasonable time for bringing a motion under rule 60.02(d) must be determined by "considering all attendant circumstances such as: intervening rights, loss of proof by or prejudice to the adverse party, the commanding equities of the case, the general desirability that judgments be final and other relevant factors." *Bode v. Minn. Dep't of Nat. Res.*, 612 N.W.2d 862, 870 (Minn. 2000) (quotation omitted).

Urbanek's claim under rule 60.02(d) is based on allegations that the Hubbard County Attorney had no authority to move for the production of records prior to filing a commitment petition, that the DOC end-of-confinement review committee illegally disclosed Urbanek's private data and records to the Hubbard County Attorney, that Urbanek either did not have a mandatory prepetition screening or his prepetition screening did not comply with statutory requirements, and that Urbanek did not receive notice of the civil-commitment proceeding until he was forcibly apprehended at his home. All of those allegations are based on conduct that occurred before Urbanek's civil-commitment trial in 2004. Yet Urbanek has not offered a satisfactory reason why his motion challenging the judgment as void was not brought until 12 years after his direct appeal. Thus, the "general desirability that judgments be final" strongly favors denial of Urbanek's rule 60.02(d) motion as untimely.

Urbanek relied on rule 60.02(f) for his claim that his counsel in the civil-commitment proceeding was ineffective.[5] "Whether a motion is made within a reasonable time [under rule 60.02(f)] depends upon all of the facts and circumstances involved, and the district court may consider whether any prejudice will result to the other party if the motion is granted." *Buck Blacktop, Inc. v. Gary Contracting & Trucking Co.*, 929 N.W.2d 12, 20 (Minn. App. 2019) (quotation omitted).

Urbanek's main justification for bringing his rule 60.02(f) motion 12 years after his direct appeal is his recent discovery of his commitment attorney's criminal charges. Urbanek argues that he "was not previously aware of [his commitment attorney's] drug addiction" and argues that his "delay resulted from [his] confinement, his negligible access to resources, and legal representation by [his commitment attorney], who had a conflict of interest in disclosing [his commitment attorney's] errors to [him]." But Urbanek does not assert that his commitment attorney's alleged ineffective performance was caused by drug use. Indeed, he concedes that such an argument would be speculative "because [he] never saw [his commitment attorney] take drugs." And, as Urbanek points out, a claimant need

[5] The county argues that "[i]neffective assistance of counsel claims brought under Rule 60.02 are motions under clause (a) and must be brought within a year of the judgment or order in question." *See Chapman v. Special Sch. Dist. No. 1*, 454 N.W.2d 921, 923 (Minn. 1990) (noting that "[a]ttorney misconduct has been characterized as 'excusable neglect' under clause (a)"). Urbanek counters that because "his claim of ineffective counsel was not based on 'inadvertence,' but on gross errors by his attorney" and because he "lost all of his possessions and was deprived of his constitutional right to virtually every liberty a person has," his claim "falls under the exceptional circumstances which require the use of Rule 60.02(f)," which allows a motion to be brought within a reasonable time. We need not decide whether Urbanek's ineffective-assistance-of-counsel claim should have been brought under paragraph (a), and not (f), because Urbanek's ineffective-assistance-of-counsel claim was untimely under paragraph (f).

not provide an explanation of why counsel was ineffective to establish such a claim. *Johnson*, 931 N.W.2d at 656 n.6.

The alleged ineffective performance on which Urbanek relies occurred during the commitment proceeding in 2004. Indeed, he argues that "there was evidence that something was amiss" and that his commitment attorney's proposed findings of fact "alone should have been a red flag of such to the court and opposing counsel." Because, as Urbanek argues, the alleged ineffective representation was known at the time of the commitment proceeding, it should have been raised closer to that time.

We note that this court has rejected as untimely requests for relief under rule 60.02 based on similar claims of ineffective assistance of counsel against the same commitment attorney involving the same circumstances. *See, e.g., id.* at 656 & n.6 (holding that six-year delay in bringing ineffective-assistance-of-counsel claim based on attorney's recent criminal charges made that claim untimely); *In re Civil Commitment of Radke*, No. A18-1705, 2019 WL 3000733, at *2-3 (Minn. App. July 8, 2019) (holding that five-year delay in bringing ineffective-assistance-of-counsel claim based on attorney's recent criminal charges made that claim untimely), *review denied* (Minn. Sept. 25, 2019). Moreover, the county would be significantly prejudiced if it had to retry this case more than 13 years after the original commitment trial because memories fade and witnesses who testified at the original trial may no longer be available.

In sum, Urbanek's motion for relief under rule 60.02(d) and 60.02(f) was not made within a reasonable time, and the district court would have been justified in denying the

motion as untimely. However, because the district court addressed the merits of Urbanek's motion, we do so as well.

II.

Urbanek contends that the underlying judgment of commitment is void and that the district court therefore erred by denying his motion for relief under rule 60.02(d). He argues that his commitment is void because "[n]either the Hubbard County nor the Otter Tail County district courts had subject matter jurisdiction over [his] commitment," "[n]either [the] Hubbard County nor Otter Tail County district courts had personal jurisdiction over [his] commitment," and he "did not receive due process or equal protection." We address each argument in turn.

Subject-Matter Jurisdiction

Urbanek argues that the district court lacked subject-matter jurisdiction over his commitment because "[a] county attorney's right to proceed under Minn. Stat. § 253B.185 was never invoked because facts were not submitted to a county attorney, only illegally disclosed data and records"; "Minn. Stat. § 253B.185 did not confer authority for the Hubbard County attorney to act, including making a motion for production of records"; and "[he] either did not have a mandatory prepetition screening, or his prepetition screening did not comply with statutory requirements." This court reviews issues involving subject-matter jurisdiction de novo. *Bode*, 612 N.W.2d at 866.

"Subject-matter jurisdiction is the court's authority to hear the type of dispute at issue and to grant the type of relief sought." *Seehus v. Bor-Son Constr., Inc.*, 783 N.W.2d 144, 147 (Minn. 2010). "As a general rule, state courts have subject-matter jurisdiction

over civil commitments." *In re Civil Commitment of Beaulieu*, 737 N.W.2d 231, 237 (Minn. App. 2007); *In re Ivey*, 687 N.W.2d 666, 669 (Minn. App. 2004), *review denied* (Minn. Dec. 22, 2004); *see also State ex rel. Anderson v. U.S. Veterans Hosp.*, 128 N.W.2d 710, 715 (Minn. 1964) ("The fact that the probate court has jurisdiction over commitment proceedings by virtue of our constitution has long been established."). Procedural requirements in a statute, "even if written in mandatory language," do not necessarily "operate to divest the district court of subject matter jurisdiction when such statutory provisions are not satisfied." *See In re Civil Commitment of Giem*, 742 N.W.2d 422, 423, 428-29 (Minn. 2007) (holding that although the timing provisions in Minn. Stat. § 253B.08, subd. 1 (2006) are mandatory, the deadlines do not "operat[e] to limit the subject matter jurisdiction of the district court").

Urbanek's briefing does not cite to authority establishing that the alleged procedural errors in this case divested the district court of subject-matter jurisdiction or otherwise explain why such errors prevented the district court from exercising subject-matter jurisdiction. And he failed to provide such authority or explanation when pressed on the issue at oral argument before this court. Thus, Urbanek provided no legal basis to conclude that the general rule that district courts have subject-matter jurisdiction over civil commitments would not apply to his case. Additionally, we discern no legal basis for reaching that conclusion. We therefore reject his assertion that the district court lacked subject-matter jurisdiction to commit him.

Personal Jurisdiction

Urbanek argues that the district court lacked personal jurisdiction because he "never received notice of any kind of any proceeding until he was forcibly apprehended at his home." Whether personal jurisdiction exists is a question of law, which this court reviews de novo. *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 749 (Minn. 2019).

Personal jurisdiction has two requirements:

> (1) an adequate connection between the state and the party over whom jurisdiction is sought, or a basis for the exercise of jurisdiction; and (2) a form of process that satisfies the requirements of both due process and the Minnesota Rules of Civil Procedure governing the commencement of civil actions.

Ivey, 687 N.W.2d at 670. "Due process requires that a defendant receive notice of a civil action and an opportunity to be heard." *Wick v. Wick*, 670 N.W.2d 599, 603 (Minn. App. 2003). "[A] defense of lack of personal jurisdiction can be waived, either explicitly or by implication." *Ivey*, 687 N.W.2d at 670. "[I]rregularities in the establishment of personal jurisdiction do not negate the assumption of personal jurisdiction." *Id.*

Urbanek does not dispute that there is an adequate connection between him and the State of Minnesota for purposes of personal jurisdiction. Instead, he argues that he received inadequate process because he "was forcibly apprehended and imprisoned when served with the [commitment] petition, without any prior notice." However, a court's personal jurisdiction over a party is proper even when the party has "been brought within the court's jurisdiction by reason of a forcible abduction" or "is before the court by unlawful force, duress, or fraud" so long as the basic requirements of notice and an opportunity to be heard are satisfied. *Id.* at 670-71 (quotations omitted).

Urbanek was apprehended by the county pursuant to a hold order and personally served with the civil-commitment petition. The district court appointed counsel to represent Urbanek, and he contested both the hold order and the petition for commitment at hearings before the commitment court. Because the basic requirements of notice and an opportunity to be heard were satisfied, we reject Urbanek's personal-jurisdiction argument.

Due Process and Equal Protection

Urbanek argues that he was denied substantive and procedural due process and that the district court's decision that he "was not owed any type of prepetition screening or other statutory safeguards violated [his] constitutional right to equal protection." Constitutional challenges are questions of law, which this court reviews de novo. *State v. Holloway*, 916 N.W.2d 338, 344, 347 (Minn. 2018).

The fundamental requirements of procedural due process are notice and an opportunity to be heard. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012). Urbanek received notice and an opportunity to be heard in the underlying commitment proceeding.

Urbanek's substantive-due-process and equal-protection arguments were not raised in the district court. "A reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it." *Thiele*, 425 N.W.2d at 582 (quotation omitted). We do not consider Urbanek's substantive-due-process and equal-protection arguments except to note that we do not discern a reason that warrants departure from the general rule.

In sum, Urbanek has not established that any of the alleged procedural irregularities deprived the district court of subject-matter or personal jurisdiction or that the proceeding violated his constitutional rights. Because Urbanek's claim that his civil-commitment judgment is void fails on the merits, the district court did not abuse its discretion in denying Urbanek's motion for relief under rule 60.02(d).

III.

Urbanek contends that the "district court abused its discretion when it denied [his] rule 60.02(f) motion to vacate his commitment and for a new trial based on [his] ineffective counsel" in the civil-commitment proceeding.

A person who is indeterminately committed as an SDP or an SPP may bring an ineffective-assistance-of-counsel claim under Minn. R. Civ. P. 60.02. *In re Civil Commitment of Lonergan*, 811 N.W.2d 635, 643 (Minn. 2012). "This court analyzes ineffective-assistance-of-counsel claims in civil-commitment cases under the *Strickland* standard that applies in criminal cases." *Johnson*, 931 N.W.2d at 657. To prevail under *Strickland*, a defendant "must show that counsel's representation fell below an objective standard of reasonableness" (the performance factor) and that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" (the prejudice factor). *Strickland v. Washington*, 466 U.S. 668, 687-88, 694, 104 S. Ct. 2052, 2064, 2068 (1984); *Johnson*, 931 N.W.2d at 657.

This court reviews a claim of ineffective assistance of counsel de novo. *Johnson*, 931 N.W.2d at 657. Appellate courts apply "a strong presumption that [an attorney's] performance falls within the wide range of 'reasonable professional assistance.'" *State v.*

Jones, 392 N.W.2d 224, 236 (Minn. 1986). "[T]rial tactics should not be reviewed by an appellate court, which unlike the counsel, has the benefit of hindsight." *State v. Nicks*, 831 N.W.2d 493, 516 (Minn. 2013) (quotation omitted); *see also State v. Bahtuoh*, 840 N.W.2d 804, 817 (Minn. 2013) (stating that the supreme court has "cautioned against relying on hindsight when reviewing decisions made by trial counsel").

Urbanek asserts that his commitment attorney "did not challenge the petition"; "did not challenge the fact that the petition was not accompanied by a prepetition screening report and examiner's statement"; "did not challenge the report and testimony of [one of the state's witnesses]"; "did not particularize" a court-appointed examiner's opinions that were favorable to him; and "did not put forth less restrictive alternatives to commitment."

Most of Urbanek's assertions relate to matters of trial strategy and tactics, which generally are not subject to judicial review. *See Nicks*, 831 N.W.2d at 516. Moreover, Urbanek fails to explain why his commitment attorney's performance was objectively unreasonable. Instead, he relies on hindsight gained from reviewing the record and trial transcript more than 13 years after the commitment trial to point out ways that his commitment attorney could have performed better. For example, Urbanek acknowledges that "several of the errors in the [commitment] petition were corrected by oral amendment to the petition in the hold hearing," but he complains that his commitment attorney "did not make a motion to correct the hold order, amend the petition, or take any further action for the parties to stipulate to correct information."

In sum, Urbanek has failed to show that his commitment attorney's representation fell below an objective standard of reasonableness. Because Urbanek's ineffective-

assistance-of-counsel claim fails on the merits, the district court did not abuse its discretion by denying Urbanek's motion for relief under rule 60.02(f).

Affirmed.

RODENBERG, Judge (concurring specially)

I concur with the court's opinion and agree that appellant's commitment is not "void," that the committing court had both personal and subject-matter jurisdiction, and that the district court did not err in denying appellant rule 60 relief. Still, there are aspects of appellant's situation that are concerning and might warrant exercise of the Minnesota Supreme Court's supervisory powers.

Appellant was convicted of second-degree criminal sexual conduct in 1993. He was released from prison in 1998 and was erroneously put on a ten-year conditional release period instead of the proper five-year period. Then, in 2004, appellant was arrested[6] and incarcerated for a release-period violation (the facts of which he continues to dispute) for acts that occurred after his release period should have ended. While he was incarcerated, the mistaken release-period duration was corrected, and appellant was released from prison and from supervision by the Minnesota Department of Corrections (DOC). Appellant resided thereafter in Otter Tail County. The DOC communicated to the Hubbard County Attorney that appellant's case had not been reviewed for possible civil commitment as is DOC's ordinary practice. DOC did determine that appellant remained a risk to reoffend after release, and it so advised the Hubbard County Attorney. The Hubbard County Attorney obtained appellant's documents and records to investigate the possibility of civilly committing appellant, and commissioned a prepetition screening by two examiners.

[6] Some of appellant's arguments in this appeal rely on facts from his earlier criminal appeal. The record here is imperfect because, as discussed below, the criminal appeal was resolved over a decade ago and the record from that case is not now before us.

That screening recommended that appellant be civilly committed. The records review and prepetition screening were irregular in that the proper DOC referral should have been to the Otter Tail County Attorney under Minn. Stat. § 244.05, subd. 7(c) (2002). Appellant contends, and the record supports, that appellant did not receive notice of the records review and prepetition screening in Hubbard County. And appellant argues, with some justification, that the absence of notice to him impaired his ability to raise this irregularity at that time.

Appellant also argues that his appointed counsel's performance during the initial commitment proceeding was ineffective because counsel did not raise any of these issues either in the commitment trial or on appeal to this court. Appellant argues—again with some justification—that the errors of which he now complains infected this court's 2006 opinion. It seems true that his conditional release was erroneously extended, the claimed violations of it and appellant's incarceration in 2004 were after the release period should have expired, and the records review and prepetition screening in Hubbard County was irregular. But it is not for us at this late date to revisit appellant's initial appeal. *Cf.* Minn. R. Civ. App. P. 140.01 (stating that there is no rehearing in this court). As the majority rightly notes, this court affirmed appellant's commitment nearly 14 years ago, and the Minnesota Supreme Court denied review. *In re Civil Commitment of Urbanek*, No. A05-1633, 2006 WL 44358, at *1, *4 (Minn. App. Jan. 10, 2006), *review denied* (Minn. Mar. 28, 2006).

Appellant's criminal case is over and done. His commitment is final, and he has not demonstrated in this appeal that the district court abused its discretion in denying him rule

60 relief. If appellant is to have any relief here, it seems to me it can only be obtained from the Minnesota Supreme Court, exercising its supervisory powers. *See Shorter v. State*, 511 N.W.2d 743, 747 (Minn. 1994) (reversing and remanding for trial because of "procedural irregularities" under the supreme court's supervisory powers as necessary to ensure the appearance of justice). As an intermediate appellate court, we cannot properly exercise such supervisory powers, which are reserved for the supreme court. *State v. Gilmartin*, 535 N.W.2d 650, 653 (Minn. App. 1995), *review denied* (Minn. Sept. 20, 1995).