STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0611

In the Matter of the Civil Commitment of:
Brandon Owen Keating.

Filed February 3, 2020
Affirmed
Slieter, Judge

Becker County District Court
File No. 03-PR-08-597

Brandon Owen Keating, Moose Lake, Minnesota (*pro se* appellant)

Keith Ellison, Attorney General, Noah A. Cashman, Assistant Attorney General, St. Paul, Minnesota; and

Brian McDonald, Becker County Attorney, Detroit Lakes, Minnesota (for respondent Becker County Human Services)

Considered and decided by Larkin, Presiding Judge; Slieter, Judge; and Randall, Judge.*

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

SLIETER, Judge

Appellant Brandon Owen Keating challenges the district court's denial of his motion to withdraw his 2008 stipulation to be civilly committed to the Minnesota Sex

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Offender Program as a sexually dangerous person. Because appellant brought this motion nearly ten years after his stipulation, it is untimely. Therefore, we affirm.

FACTS

Appellant has a long history of sexually abusing children, beginning in the late 1980s. In March 2008, Becker County Human Services petitioned to civilly commit appellant as a sexual psychopathic personality (SPP) and a sexually dangerous person (SDP) pursuant to Minn. Stat. § 253B.02, subds. 18b, 18c (2006). The district court appointed counsel to represent appellant. Appellant stipulated that he met the criteria to be committed as an SDP, and the state dismissed its petition to commit appellant as a person with an SPP. In August 2008, the district court indeterminately committed appellant as an SDP.

In February 2018, appellant's commitment attorney was charged with controlled-substance crimes. In June 2018, appellant moved to withdraw his stipulation to an SDP pursuant to Minn. R. Civ. P. 60.02, claiming his commitment attorney was ineffective because his attorney informed him that he would be released from his commitment in "three or four years." The district court denied the motion. This appeal follows.

D E C I S I O N

Appellant seeks to vacate his judgment of commitment as an SDP. Whether or not to grant relief from a final judgment is within the discretion of the district court. Minn. R. Civ. P. 60.02. We review a district court's decision to vacate judgment 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).

Rule 60.02 provides that a party may seek relief from a "final judgment . . . , order, or proceeding" based on several grounds. Appellant's claim is time-barred under all of the rule 60.02 subdivisions.

Motions pursuant to rule 60.02(a)-(c) must be brought within one year of the judgment, order, or proceeding being challenged. Minn. R. Civ. P. 60.02. Construing appellant's motion as falling under rule 60.02(a)-(c), his claim is, as the district court concluded, time-barred. *See Johnson*, 931 N.W.2d at 656 (rejecting ineffective assistance of counsel in a civil commitment case as untimely after the one-year requirement under rule 60.02). Judgment of commitment was entered in 2008 and, therefore, appellant's motion is untimely.

Motions pursuant to rule 60.02(d)-(f) must be brought within a "reasonable time." The thrust of appellant's argument is that his attorney erroneously informed him that he would be released from his commitment in "three or four years."[1] Assuming, for our analysis only, that this is true, appellant was aware of this purported ineffectiveness of counsel when he was not released from his commitment after four years. *See id.* at 657 (applying the *Strickland* standard to ineffective-assistance-of-counsel claims in civil-commitment cases). Because appellant brought his motion approximately six years after the expiration of the four-year period allegedly mentioned by his attorney, his motion was

[1] Appellant also makes vague assertions that during the commitment hearing his attorney was ineffective because of the attorney's February 2018 controlled-substance charges. Appellant, however, offers no explanation as to how the 2018 charges affect his attorney's abilities in 2008. The mere assertion of ineffectiveness by court-appointed counsel is insufficient. *See Johnson*, 931 N.W.2d at 658 (requiring party asserting ineffectiveness to provide record support for the claim).

not brought within "a reasonable time," and is time-barred. *Id.* at 657 (explaining that rule 60.02(f) only applies in exceptional circumstances and concluding a seven-year delay in raising claim unreasonable).

The district court therefore did not abuse its discretion in denying appellant's motion to vacate the SDP commitment.

Affirmed.