STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1546

In the Matter of the Civil Commitment of:
Jesse Nikolas Rowland.

Filed July 26, 2021
Affirmed
Bjorkman, Judge

Mille Lacs County District Court
File No. 48-PR-10-2629

Jesse Nikolas Rowland, Moorhead, Minnesota (pro se appellant)

Joe Walsh, Mille Lacs County Attorney, Erica Madore, Assistant County Attorney, Milaca, Minnesota (for respondent Mille Lacs County Family Services)

Considered and decided by Bjorkman, Presiding Judge; Larkin, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges the district court's denial of his motion for relief from his civil commitment under Minn. R. Civ. P. 60.02 on grounds that newly discovered evidence and ineffective assistance of counsel undermine the basis for his initial commitment. Because rule 60.02 relief is unavailable for persons seeking discharge from indeterminate civil commitment, and appellant's motion fails on its merits, we affirm.

FACTS

Appellant Jesse Nikolas Rowland was indeterminately committed as what was then known as mentally ill and dangerous (MI&D) on February 15, 2011. He suffers from schizophrenia, which causes delusions and auditory hallucinations. These hallucinations have commanded him to harm himself and his family members.

The events leading to his MI&D commitment began in late 2010, when Rowland stopped taking his prescribed psychotropic medications. At the time, Rowland was living with his father, brother, and his brother's girlfriend. On November 17, he experienced auditory hallucinations in the form of his brother's and the girlfriend's voices. He entered their bedroom and they woke to see him "standing right next to them holding a large knife." Rowland said "he would kill them if they didn't make the voices stop," and he "held the knife towards [the girlfriend's] chest area." He later told a doctor that he "held the knife to his brother's neck." Rowland was charged with multiple assault offenses and with making threats of violence.[1]

Mille Lacs County petitioned the district court to commit Rowland as MI&D in late November. The district court preliminarily ordered that Rowland be civilly committed. Following a review hearing in February 2011, the district court indeterminately committed Rowland as MI&D. Since that time, Rowland has petitioned the Special Review Board (SRB) for provisional or full discharge from commitment five times. The SRB denied his

[1] The prosecuting attorney dismissed these charges in September 2011 pursuant to Minn. R. Crim. P. 30.01.

most recent petition in 2019 due to Rowland's "recent relapse, medication noncompliance, and alleged illegal behaviors," and revoked his prior provisional discharge.

In October 2020, Rowland sent a letter to the district court seeking a hearing date for a rule 60.02 motion challenging the basis for his commitment. He later submitted another document asserting that he had discovered new evidence that undermined the factual allegations that led to his commitment, and that he received ineffective assistance of counsel. The district court denied the motion as barred by the commitment statutes, untimely, and lacking merit. Rowland appeals.

DECISION

We review a district court's denial of a rule 60.02 motion 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). A district court abuses its discretion if it misapplies the law. *In re Guardianship of O'Brien*, 847 N.W.2d 710, 714 (Minn. App. 2014). We review a district court's interpretation of statutes and caselaw de novo. *In re Civil Commitment of Poole*, 921 N.W.2d 62, 66 (Minn. App. 2018), *review denied* (Minn. Jan. 15, 2019).

Rowland contends that the district court erred by determining that the exclusive transfer-or-discharge remedies of the Minnesota Commitment and Treatment Act, Minn. Stat. §§ 253B.01-.24 (2020) (commitment act), bar his rule 60.02 claim and that his motion otherwise fails on its merits. We address each argument in turn.

I. The district court did not err by concluding the relief Rowland seeks is not available under rule 60.02.

Rule 60.02 permits a court to relieve a party from "a final judgment . . . , order, or proceeding" on the following grounds:

> (a) Mistake, inadvertence, surprise, or excusable neglect;
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> (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial pursuant to Rule 59.03;
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> (c) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
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> (d) The judgment is void;
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> (e) The judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
>
> (f) Any other reason justifying relief from the operation of the judgment.

Minn. R. Civ. P. 60.02. A party seeking relief on the first three grounds must bring a motion within one year of the challenged order. *Id*. And a party seeking relief under the other grounds must do so within a "reasonable time." *Id*.

In *In re Civil Commitment of Lonergan*, our supreme court considered whether a person indeterminately committed as a sexually dangerous person or as a sexual psychopathic personality may obtain relief under rule 60.02. 811 N.W.2d 635, 639 (Minn. 2012). The *Lonergan* court noted that the commitment act creates discharge procedures and expressly provides "that patients indeterminately committed 'shall be transferred, provisionally discharged or discharged, *only as provided in this section*.'" *Id.* at 642

(quoting Minn. Stat. § 253B.185, subd. 1(e) (2010)).[2] Because the commitment act is "the exclusive remedy for patients . . . seeking a transfer or discharge," the supreme court reasoned that other procedures—including rule 60.02—"through which a patient . . . seeks transfer or discharge" are not available as they "distinctly conflict[]" with the commitment act. *Id*. But because the commitment act does not provide procedures for "rais[ing] nontransfer, nondischarge claims such as ineffective assistance of counsel and lack of subject matter jurisdiction," there is no distinct conflict with rule 60.02 motions asserting such claims. *Id*.; *see also In re Civil Commitment of Moen*, 837 N.W.2d 40, 45-46 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013).[3]

Rowland argues that the commitment act does not bar his rule 60.02 motion because he challenges the grounds for his commitment based on newly discovered evidence and ineffective assistance of counsel. Although Rowland asserts that his commitment was void in the first instance, he does not seek a new commitment hearing. He asked the district court to "remand" the case, "initiate a . . . motion for dismissal," or grant "[o]ther relief to vacate the commitment." On appeal, he seeks "a fair discharge" after an evidentiary hearing or a remand for the district court to consider "a substitute mentally ill

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[2] Although the statutory framework has been amended, the current MI&D commitment statute contains similar language to that at issue in *Lonergan*: "After a final determination that a patient is a person who has a mental illness and is dangerous to the public, the patient shall be transferred, provisionally discharged or discharged, only as provided in this section." Minn. Stat. § 253B.18, subd. 3.

[3] Even when there is no distinct conflict, a rule 60.02 motion may be barred when application of the rule would frustrate the purpose of the commitment act. *See Moen*, 837 N.W.2d at 46 (noting the "two-fold purpose of the Commitment Act" is to protect the public and rehabilitate the patient).

commitment." Rowland is plainly seeking to be discharged from his MI&D commitment. Indeed, he has sought precisely this relief from the SRB five times. Because the relief Rowland seeks implicates remedies that are only available under the commitment act, the district court did not err by denying his motion. *Lonergan*, 811 N.W.2d at 642; *Moen*, 837 N.W.2d at 46.

II. The district court did not abuse its discretion by denying Rowland's motion as untimely and lacking merit.

As previously noted, a party seeking relief under rule 60.02 must bring a motion "within a reasonable time." Minn. R. Civ. P. 60.02. And if the motion is premised on mistake, newly discovered evidence, or fraud, it must be brought "not more than one year after the judgment, order, or proceeding was entered or taken." *Id.* Rowland does not identify which of the rule 60.02 bases support his motion. The district court determined that Rowland's motion was untimely and lacks merit. We agree in both respects.

First, we see no abuse of discretion in the district court's determination that the motion was untimely. *See Palladium Holdings, LLC v. Zuni Loan Trust 2006-OA1*, 775 N.W.2d 168, 177 (Minn. App. 2009) ("Generally, what constitutes a reasonable time for seeking rule 60.02 relief varies based on the facts of each case."), *review denied* (Minn. Jan. 27, 2010). To the extent Rowland seeks relief under subparts (a) (mistake), (b) (newly discovered evidence), and (c) (fraud), his motion is time-barred because he did not bring it within one year after filing of the commitment order. To the extent Rowland seeks relief under subparts (d) (void judgment), (e) (satisfied or released judgment), and (f) (any other grounds), we are not persuaded that his nine-year delay is reasonable. As the district court

observed, nine years is "a significant time frame." Even now, Rowland offers no compelling reason for waiting until 2020 to bring a motion based on facts he reasonably was aware of at the time of his commitment hearing.

Second, the record persuades us that Rowland's motion fails on its merits. He asserts that "new evidence" calls into question whether (1) he held a knife to his brother's neck during the November 2010 incident, (2) he was under the influence of prescription drugs at the time of the assault, and (3) his lawyer was ineffective for failing to uncover and present this evidence to the district court. Rowland argues that this new evidence undermines the district court's finding that he committed an overt act causing or attempting to cause serious harm—a prerequisite to MI&D commitment. *See* Minn. Stat. § 253B.02, subd. 17(2). And he contends an effective attorney would have pursued areas of inquiry that may have revealed these facts in time to prevent his commitment. The record does not support either contention.

To obtain relief based on newly discovered evidence, the moving party must show "that the new evidence was not discovered until after trial, and could not have been discovered before trial by the exercise of reasonable diligence." *Frazier v. Burlington N. Santa Fe Corp.*, 811 N.W.2d 618, 631 (Minn. 2012) (quotation omitted). Rowland has made neither showing. Rowland personally addressed the district court during the February 2011 hearing, stating, "I didn't hold a knife to [my brother's] throat." A report from a court-appointed examiner submitted prior to the hearing likewise notes Rowland's denial, but states it "is inconsistent with other records documenting the incident." Rowland also points to a pharmacy record as new evidence that he was impaired—and thus could

not form the requisite intent—at the time of the incident. But the prescriptions he asserts impaired his actions were filled on November 15, 2010—two days before the incident took place—demonstrating he was aware of the medication and its potential effects at the time of the incident. In short, Rowland was aware of the "newly discovered" facts at the time of his commitment hearing. They cannot form the basis for relief under Minn. R. Civ. P. 60.02(b).

Rowland's allegations that his attorney was ineffective fail on the merits because they relate to trial strategy or lack evidentiary support. To prevail on a claim of ineffective assistance in the civil-commitment context, Rowland must show that "counsel's representation fell below an objective standard of reasonableness . . . and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Johnson*, 931 N.W.2d at 657 (quotations omitted). "General assertions of error without evidentiary support are inadequate to establish ineffective assistance of counsel." *Id.* And "reviewing court[s] generally will not review attacks on counsel's trial strategy." *Id.* (quotation omitted). We review ineffective-assistance-of-counsel claims de novo. *Id.*

Rowland alleges ineffective assistance of counsel because his attorney: (1) did not take a "statement from the victim that attests the defendant's innocence," or call Rowland's brother as a witness; (2) failed to inform Rowland that he faced a second-degree-assault charge because he placed a knife to his brother's neck; (3) should have raised the issue of "the fictional assault, intoxication, and drug use"; (4) did not communicate with him "for more than a minute"; (5) did not present evidence that Rowland did not commit an overt

act of harm; (6) did not present evidence that Rowland did not pose a risk of future harm; (7) failed to present a less-restrictive alternative than indeterminate commitment; (8) did not adequately inform him of the consequences of being designated MI&D, and that Rowland "would have contested the truth otherwise"; and (9) did not advise him that he "can and should appeal." Most of these contentions implicate matters of trial strategy that we do not review. As such, they cannot support an ineffective-assistance claim.

As to his other allegations, Rowland does not identify—and the record does not reveal—evidence that his attorney did not communicate with him, and did not inform him of the consequences of MI&D designation or his appeal options. *See id.* at 658 ("A party claiming ineffective assistance of counsel must provide adequate evidentiary and factual support for the claim."). And, as noted above, the record shows Rowland was, at the time of the commitment hearing, aware of evidence he now claims his attorney failed to uncover.

In sum, we see no error or abuse of discretion by the district court in denying Rowland's motion as untimely, lacking merit, and conflicting with the commitment act.

Affirmed.