STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2281

In re the Civil Commitment of: Ronald Edward Conner

Filed May 23, 2011
Affirmed
Hudson, Judge

Mower County District Court
File No. 50-P3-05-950

Ronald Edward Conner, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Noah Cashman, Assistant Attorney General, St. Paul, Minnesota; and

Kristen Nelsen, Mower County Attorney, Austin, Minnesota (for respondent State)

Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and Bjorkman, Judge.

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

HUDSON, Judge

Appellant challenges the district court's denial of his rule 60.02 motion to vacate his indeterminate commitment as a sexually-dangerous person. He argues that the district court abused its discretion by denying him relief because: (1) his placement in the Minnesota sex-offender treatment program (MSOP) violated his constitutional rights;

(2) he was denied appropriate treatment in MSOP; (3) he received prejudicially ineffective assistance of trial counsel; and (4) he was defrauded by misrepresentations that his treatment in MSOP was time-limited. Because, under current law, appellant's constitutional and right-to-treatment claims are not properly raised by a rule 60.02 motion, and because his ineffective-assistance and fraud claims are untimely and lack a factual basis, we affirm.

FACTS

Appellant Ronald Edward Conner was initially committed to the Minnesota Sex Offender Program (MSOP) as a sexually dangerous person (SDP) and a sexual psychopathic personality (SPP) in December 2005, after a two-day trial. In April 2006, following a review hearing, the district court issued an order indeterminately committing appellant. Appellant challenged his commitment by direct appeal, and this court affirmed. *In re Civil Commitment of Conner*, No. A06-1134, 2006 WL 3593342 (Minn. App. Dec. 12, 2006). In December 2008, appellant filed a petition with a special-review board seeking discharge, provisional discharge, or transfer to a non-secure facility. The review board recommended denial of the petition, and appellant did not seek reconsideration. Accordingly, the judicial appeal panel adopted the special-review-board's recommendation and denied the petition in October 2009.

In April 2010, appellant filed a pro se motion in district court for relief under Minn. R. 60.02(f) from the judgment of indeterminate commitment. Appellant asserted that (1) his community-notification risk level was erroneously determined; (2) commitment in MSOP violated his constitutional rights because there was no viable

way to gain release and because an executive order from the governor of Minnesota impermissibly precluded release; (3) MSOP did not provide appropriate treatment; (4) he should be released from civil commitment because his criminal sentences had expired; and (5) his trial counsel was ineffective. The district court denied the motion without a hearing and concluded that (1) appellant's risk level was administratively determined; (2) the civil-commitment discharge standard was not unconstitutional, nor was the governor's executive order, which provided only that an MSOP patient may not be released unless required by law or court order; (3) appellant failed to provide evidence that he had been deprived of appropriate treatment; (4) appellant's criminal conviction did not determine the standard for civil commitment; and (5) appellant's ineffective-assistance claims were untimely, and he failed to show that he had been prejudiced by counsel's representation. This appeal follows.

D E C I S I O N

Under Minn. R. Civ. P. 60.02, the district court has discretionary power to grant relief from a final judgment; therefore, this court reviews a district court's decision whether to vacate a judgment for abuse of discretion. *Charson v. Temple Israel*, 419 N.W.2d 488, 490 (Minn. 1988). But whether appellant may properly move for an order to vacate his commitment by a rule 60.02 motion presents a legal issue that this court reviews de novo. *In re Civil Commitment of Lonergan*, 792 N.W.2d 473, 476 (Minn. App. 2011), *review granted* (Minn. Apr. 19, 2011).

This court has held that the statutory framework governing commitment as an SDP does not authorize a challenge to civil commitment or to the adequacy of a committed

person's treatment by means of a rule 60.02 motion. *Id*. at 476–77. Appellant argues that his commitment in MSOP violates his constitutional rights and that his treatment in that program is inadequate. Because, under current law, appellant is not entitled to raise these arguments by way of a rule 60.02 motion, the district court properly denied appellant's claims for relief based on those arguments.

Appellant also argues that he was denied the effective assistance of trial counsel. This court has previously considered ineffective-assistance-of-counsel claims raised by civilly committed persons in timely motions for a new trial, on direct appeal, or in motions to vacate under rule 60.02. *See, e.g.*, *In re Dibley*, 400 N.W.2d 186, 190–91 (Minn. App. 1987) (asserting ineffective-assistance claim in timely motion for new trial); *In re Cordie*, 372 N.W.2d 24, 28 n.29 (Minn. App. 1985) (reviewing ineffective-assistance claims under rule 60.02 motion filed approximately five months after commitment), *review denied* (Minn. Sept. 26, 1985). But rule 60.02 motions must be brought "within a reasonable time." Minn. R. Civ. P. 60.02. The district court did not abuse its discretion by concluding that appellant's motion, which was filed four years after his commitment, was untimely. *See, e.g., Majestic, Inc. v. Berry*, 593 N.W.2d 251, 256 (Minn. App. 1999) (suggesting that three-and-one-half years would not be reasonable time for motion to vacate filed under rule 60.02(f)), *review denied* (Minn. Aug. 18, 1999). In addition, appellant's ineffective-assistance claims relate to his assertions that trial counsel failed to "be a vigorous advocate" and to subpoena and cross-examine witnesses. Appellant has failed to present facts supporting these claims, and the record shows that

counsel vigorously cross-examined opposing witnesses and represented his interests at trial.

Finally, appellant argues for the first time on appeal that he was defrauded by counsel's and the state's representations that MSOP was a time-limited treatment program, when in reality MSOP has not yet released a person from treatment. Because appellant did not raise this claim before the district court, we need not address it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that reviewing court need not consider argument not raised before and addressed by district court). In any case, such a claim was untimely because rule 60.02 requires that a motion to vacate a judgment based on fraud must be made "not more than 1 year after the judgment, order, or proceeding was entered or taken." Minn. R. Civ. P. 60.02(c). We further note that appellant has failed to allege any facts supporting his reliance on any representation of time-limited treatment. Appellant has availed himself of the opportunity to seek discharge or transfer before a special-review board, which recommended denial of his petition, and he did not seek reconsideration before a judicial appeal panel, which adopted the special-review-board's recommendation. *See* Minn. Stat. § 253B.19, subd. 2(b) (2010) (stating procedure for requesting reconsideration of special-review-board recommendation).

We conclude that the district court properly denied appellant's constitutional and right-to-treatment claims, which are not available by way of a rule 60.02 motion, and did not abuse its discretion by denying appellant's motion to vacate his commitment based on his additional claims.

Affirmed.