STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1196

In the Matter of the Civil Commitment of: Michael J. C. Jones.

Filed November 21, 2011
Affirmed
Kalitowski, Judge

Wadena County District Court
File No. 80-PR-10-1036

Michael J. C. Jones, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Scott E. Haldeman, Assistant Attorney General, St. Paul, Minnesota; and

Kyra L. Ladd, Wadena County Attorney, Wadena, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Peterson, Judge; and Crippen, Judge.*

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

KALITOWSKI, Judge

Appellant Michael J.C. Jones challenges the district court's denial of his motion for relief from judgment under Minn. R. Civ. P. 60.02(f). We affirm.

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

D E C I S I O N

Appellant was indeterminately committed as a sexually dangerous person (SDP) in January 2011. On the advice of court-appointed counsel, appellant stipulated that the evidence was sufficient to civilly commit him. The stipulation was part of an agreement with the county not to seek appellant's commitment as a sexual psychopathic personality (SPP). About one week after the district court ordered his indeterminate commitment, appellant moved for relief from judgment under Minn. R. Civ. P. 60.02. Appellant alleged that he was deceived into stipulating to commitment, that his commitment violates the constitution, that the evidence was insufficient to support commitment, and that his counsel was ineffective by deceiving him about the likelihood of his release. The district court denied appellant's motion.

Appellant now challenges the district court's denial of his motion. We review 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 a rule 60.02 motion is proper is a legal issue, which we review de novo. *In re Commitment of Lonergan*, 792 N.W.2d 473, 476 (Minn. App. 2011), *review granted* (Minn. Apr. 19, 2011).

In *Lonergan*, we held that a rule 60.02 motion is an improper vehicle for an SDP or an SPP to vacate a civil commitment or make a constitutional challenge to the adequacy of treatment. *Id.* at 476-77. Instead, relief is to be sought through the process outlined in the Minnesota Commitment and Treatment Act. *Id.* at 476-77; *see* Minn. Stat. §§ 253B.185, subds. 4, 18, 253B.19 (2010) (establishing a special review board to hear

petitions for reduction in custody). Therefore, under *Lonergan* most of appellant's claims fail.

But *Lonergan* does not bar an SDP or SPP from raising an ineffective-assistance claim in a rule 60.02 motion. *Beaulieu v. Minn. Dep't of Human Servs.*, 798 N.W.2d 542, 550 (Minn. App. 2011), *review granted* (Minn. July 19, 2011); *see also In re Cordie*, 372 N.W.2d 24, 28-29 (Minn. App. 1985) (reviewing a civil commitment for ineffective assistance of counsel under a rule 60.02 motion), *review denied* (Minn. Sept. 26, 1985).

A person who is the subject of a civil-commitment proceeding "has the right to be represented by counsel" and may be appointed "a qualified attorney" if the person has not retained private counsel. Minn. Stat. § 253B.07, subd. 2c (2010). The standard for evaluating the adequacy of counsel in civil commitment cases is the same as the standard applied in criminal cases. *Cordie*, 372 N.W.2d at 28. We look to whether the appointed counsel exercised "the diligence of a reasonably competent attorney under similar circumstances." *Id.* at 28. And we set aside a judgment only if we find that counsel's performance was unreasonable and that the deficiency likely prejudiced the outcome. *Strickland v. Washington*, 466 U.S. 668, 687, 692-93, 104 S. Ct. 2052, 2064, 2068 (1984). Where the claim is that the lawyer's deficient advice led the client to forego a trial, prejudice is measured by whether the client would have made the decision to forego trial regardless of the erroneous advice. *Anderson v. State*, 746 N.W.2d 901, 909 (Minn. App. 2008).

Appellant alleges his attorney "informed him that if he stipulated to SDP . . . he could enter treatment, complete treatment and be released within [two to three] years of

commitment." But there is no support for this claim in the record; rather appellant stipulated that his commitment was to be "indeterminate." And he stated to the district court that he understood "indeterminate" to mean he will not be discharged until a special review board determines that he is "capable of making an acceptable adjustment to open society," that he is "no longer dangerous to the public" and that he is "no longer in need of in-patient treatment and supervision" under the Minnesota Commitment and Treatment Act. Appellant further stated that his attorney's advice was consistent with this understanding. The district court found that by agreeing to commitment as an SDP, appellant secured the prosecutor's agreement to dismiss a pending petition to commit him as an SPP and that appellant "entered into the stipulation voluntarily and willingly." We defer to the district court's credibility assessments. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). Therefore, the district court did not abuse its discretion by denying appellant's ineffective-assistance claim.

Affirmed.