STATE OF MINNESOTA
IN COURT OF APPEALS
A11-154

In the Matter of the Civil Commitment
of Ryan James White.

Filed June 13, 2011
Affirmed
Klaphake, Judge

Marshall County District Court
File No. P5-04-238

Ryan James White, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Matthew Frank, Angela Helseth Kiese, Assistant Attorneys General, St. Paul, Minnesota; and

Michael D. Williams, Marshall County Attorney, Warren, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Toussaint, Judge; and Connolly, Judge.

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

KLAPHAKE, Judge

Appellant challenges a district court order denying his motion under Minn. R. Civ. P. 60.02 to vacate his indeterminate civil commitment as a sexually dangerous person (SDP). Because appellant's motion was untimely, because civilly committed persons may not seek discharge on constitutional grounds or challenge the adequacy of their treatment by means of a 60.02 motion under *In re Civil Commitment of Lonergan*, 792

N.W.2d 473 (Minn. App. 2011), *review granted* (Minn. Apr. 19, 2011), and because appellant has not offered facts to support his claim of ineffective assistance of counsel, we affirm.

D E C I S I O N

This court affirmed appellant's civil commitment as an SDP following his direct appeal in 2005. *In re White*, No. A05-1474 (Minn. App. Nov. 22, 2005), *review denied* (Minn. Jan. 25, 2006). Four years later, rather than seeking review through the statutory framework established for those civilly committed under Minn. Stat. § 253B.185 (2008), appellant sought relief by moving the district court pro se to vacate a judgment under Minn. R. Civ. P. 60.02(f), claiming that he had no means of obtaining his release even if he no longer met the criteria for civil commitment, and that no person had ever been released from civil commitment. He also argued that his trial counsel was ineffective. The district court denied the motion, ruling that it was untimely, did not demonstrate the exceptional circumstances required for relief under rule 60.02(f), did not show that appellant's continued commitment violated the constitution in any respect, did not demonstrate on the merits that appellant's attorney provided ineffective assistance, and was not a proper basis for challenging the legitimacy or quality of his treatment.

The arguments raised by appellant have been fully considered and rejected in numerous opinions issued by this court in the past few months. *See, e.g.*, *Lonergan*, 792 N.W.2d at 476; *In re Civil Commitment of Beals*, No. A10-1753 (Minn. App. May 31, 2011); *In re Commitment of Conner*, No A10-2281 (Minn. App. May 23, 2011); *In re Civil Commitment of Eggert*, No. A10-1479 (Minn. App. Mar. 8, 2011); *In re Civil*

Commitment of Stevens, No. A10-1554 (Minn. App. Mar. 1, 2011); *In re Civil Commitment of Lindsey*, No. A10-2123 (Minn. App. Feb. 24, 2011); *In re Civil Commitment of Guy*, No. A10-1392 (Minn. App. Feb. 22, 2011); *In re Civil Commitment of Kunshier*, No. A10-1270 (Minn. App. Feb. 15, 2011), *review granted* (Minn. Apr. 19, 2011). In *Lonergan*, we held that rule 60.02 is an improper vehicle for a challenge to a civil commitment when the movant attempts to vacate a civil commitment or make a constitutional challenge to the adequacy of treatment. 792 N.W.2d at 474, 477 (stating "judicial review of the indeterminate-commitment order is not the proper avenue . . . to assert a right-to-treatment argument" and "the statutory framework governing commitment as an SDP does not authorize a constitutional challenge to a commitment order or a challenge to the adequacy of a patient's conditions of treatment under rule 60.02").[1]

Further, appellant's ineffective assistance of counsel claim also fails. First, appellant's motion to vacate on this ground was untimely under rule 60.02, as "attorney misconduct" is "excusable neglect" under rule 60.02, *Chapman v. Special Sch. Dist. No. 1*, 454 N.W.2d 921, 923 (Minn. 1990), and a motion to vacate for excusable neglect must be brought within a year after entry of the underlying order. Minn. R. Civ. P. 60.02. Second, appellant has not offered facts showing how he was prejudiced by his attorney's performance or that his attorney's performance altered the outcome of his case. *See In re Dibley*, 400 N.W.2d 186, 190 (Minn. App. 1987) (stating that for civil commitment cases,

[1] While the supreme court has granted a petition for further review in *Lonergan*, we will follow that decision and its progeny until the court alters that decision.

ineffective assistance of counsel is not shown unless counsel's performance fell below objective standard of reasonableness, and without counsel's errors, the result of the proceeding would have been different), *review denied* (Minn. Mar. 25, 1987).

For all of these reasons, we conclude that the district court did not abuse its discretion by denying appellant's motion under rule 60.02. *See Roehrdanz v. Brill*, 682 N.W.2d 626, 631 (Minn. 2004) (stating a district court's decision on a motion to vacate is discretionary and will not be overturned on appeal unless the district court abused its discretion).

Affirmed.