STATE OF MINNESOTA
IN COURT OF APPEALS
A11-555

In the Matter of the Civil Commitment of: Al Stone Folson.

Filed August 15, 2011
Affirmed
Kalitowski, Judge

Ramsey County District Court
File No. 62-MH-PR-06-267

Al Stone Folson, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Stephen McLaughlin, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Kalitowski, Judge; and Wright, Judge.

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

KALITOWSKI, Judge

Appellant Al Stone Folson challenges the district court's denial of his motion for relief from judgment under Minn. R. Civ. P. 60.02. We affirm.

D E C I S I O N

Appellant was committed indeterminately as a sexually dangerous person in August 2007. This court affirmed appellant's commitment, and the supreme court denied appellant's petition for further review. *In re Commitment of Folson*, No. A07-1916

(Minn. App. Apr. 1, 2008), *review denied* (Minn. May 28, 2008). During the commitment proceedings and on direct appeal, appellant was represented by court-appointed counsel. *See* Minn. Stat. § 253B.07, subd. 2c (2010) (requiring appointment of qualified counsel to represent proposed patients in commitment proceedings). In July 2010, appellant moved the district court for relief from judgment under Minn. R. Civ. P. 60.02, and the district court denied the motion without a hearing.

Appellant 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*, this court held that a rule 60.02 motion is not the proper mechanism for a civilly committed person to challenge the constitutionality of his commitment or the adequacy of his treatment. *Id.* at 476-77. Instead, relief is to be sought through the process outlined in the Minnesota Commitment and Treatment Act. *Id.* at 477; *see* Minn. Stat. §§ 253B.18, subd. 15, 253B.185, subd. 18 (2010) (establishing guidelines for discharge from civil commitment). Thus, under *Lonergan*, appellant's attempt to use rule 60.02 to challenge the constitutionality of his indeterminate commitment and the adequacy of his treatment fails.

But *Lonergan* does not bar appellant's claim that he received ineffective assistance of counsel throughout the commitment proceedings. *See Beaulieu v. Minn. Dep't of Human Servs.*, 798 N.W.2d 542, 550 (Minn. App. 2011) (stating that a civilly committed

person may raise an ineffective-assistance claim in a rule 60.02 motion), *review granted* (Minn. July 19, 2011); *In re Cordie*, 372 N.W.2d 24, 28 (Minn. App. 1985) (reviewing a formerly committed person's rule 60.02 motion to vacate civil-commitment judgment on ineffective-assistance grounds), *review denied* (Minn. Sept. 26, 1985).

On appeal, appellant asserts that his counsel was ineffective because she "coerced him into stipulating to be committed as [a sexually dangerous person]." (Footnote omitted.) Appellant's ineffective-assistance claim, like a motion for relief due to an attorney's inadvertence or neglect, is governed by rule 60.02(a). *See, e.g., Nguyen v. State Farm Mut. Auto. Ins. Co.*, 558 N.W.2d 487, 488-91 (Minn. 1997) (analyzing legal assistant's failure to file request for trial de novo after nonbinding arbitration award); *Finden v. Klaas*, 268 Minn. 268, 270-73, 128 N.W.2d 748, 750-51 (1964) (analyzing attorney's failure to answer complaint); *Johnson v. Nelson*, 265 Minn. 71, 73-74, 120 N.W.2d 333, 335-36 (1963) (analyzing attorney's failure to answer complaint). Consequently, appellant's claim is subject to the rule's one-year time limitation. *See* Minn. R. Civ. P. 60.02 (stating that rule 60.02(a) motions shall be made "not more than 1 year after the judgment, order, or proceeding was entered or taken").

Appellant's commitment proceeding was commenced in May 2006, and the district court issued its order for indeterminate commitment in August 2007. This court affirmed appellant's commitment in April 2008, and the supreme court denied review in May 2008. But appellant did not file his motion to vacate until July 2010. Appellant's motion to vacate the commitment order, to the extent it is based on the claim that his

attorney provided him with ineffective assistance, is untimely because it was not filed within one year after the order for indeterminate commitment.

Finally, we address appellant's assertion that the district court erred by denying his "motion for appointment of counsel." The record indicates that appellant made no such motion in the district court. Thus, there is no factual basis for appellant's claim.

Because appellant's claims challenging the constitutionality of his commitment and the adequacy of his treatment are barred by *Lonergan*, and because appellant's ineffective-assistance claim is untimely, the district court did not abuse its discretion by denying appellant's rule 60.02 motion without a hearing.

Affirmed.