STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1757

In the Matter of the Civil Commitment of: James Earl Williams

Filed April 15, 2013
Affirmed
Worke, Judge

Ramsey County District Court
File No. 62-MH-PR-05-564

James E. Williams, Moose Lake, Minnesota (pro se appellant)

John J. Choi, Ramsey County Attorney, Beth G. Sullivan, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County)

Considered and decided by Worke, Presiding Judge; Schellhas, Judge; and Crippen, Judge.*

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

WORKE, Judge

Appellant challenges the district court's denial of his rule 60 motion to vacate his civil commitment, arguing that the district court erred in ruling that his claims lacked merit. 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

In February 2007, the district court ordered appellant James Earl Williams's indeterminate commitment as a sexually dangerous person (SDP). The parties stipulated that the district court's findings of fact and conclusions of law would form the basis for appellant's indeterminate commitment. In January 2011, appellant moved the district court for relief pursuant to Minn. R. Civ. P. 60.02(f). The district court denied appellant's motion. Minn. R. Civ. P. 60.02 provides a district court with discretionary power to grant relief from a final judgment; we review a district court's denial of relief under rule 60.02 for an abuse of discretion. *Charson v. Temple Israel*, 419 N.W.2d 488, 490 (Minn. 1988).

Ineffective assistance of counsel

Appellant first argues that his counsel for commitment proceedings was ineffective. In denying appellant's motion, the district court determined that appellant's ineffective-assistance-of-counsel claim was untimely.

This court may consider ineffective-assistance-of-counsel claims of civilly committed persons raised in a motion under rule 60.02. *See In re Cordie*, 372 N.W.2d 24, 28-29 (Minn. App. 1985) (reviewing claim of ineffective assistance of counsel under rule 60.02 motion filed after commitment), *review denied* (Minn. Sept. 26, 1985). But a challenge under this rule must be raised "within a reasonable time." Minn. R. Civ. P. 60.02. What constitutes a reasonable time under rule 60.02 varies from case to case and must be determined in each instance from the facts before the court. *Newman v. Fjelstad*, 271 Minn. 514, 522, 137 N.W.2d 181, 186 (1965) (stating that in determining reasonable

time, court should consider circumstances such as "intervening rights, loss of proof by or prejudice to the adverse party, the commanding equities of the case, the general desirability that judgments be final and other relevant factors") (quotation omitted). The district court ordered appellant's indeterminate commitment in February 2007 and he sought relief in January 2011. He fails to explain this nearly four-year delay. The district court did not abuse its discretion by denying the motion as untimely.

Although timeliness disposes of appellant's ineffective-assistance-of-counsel claim, it also fails on the merits. This court analyzes an ineffective-assistance-of-counsel claim in a civil-commitment case by applying the *Strickland* standard used to analyze such a claim in criminal cases. *See In re Dibley*, 400 N.W.2d 186, 190 (Minn. App. 1987), *review denied* (Minn. Mar. 25, 1987). To establish ineffective assistance of counsel under the *Strickland* standard, a defendant must demonstrate that counsel's representation "fell below an objective standard of reasonableness," and that "but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 687–88, 694, 104 S. Ct. 2052, 2064, 2068 (1984). There is a strong presumption that counsel's representation was reasonable. *State v. Pearson*, 775 N.W.2d 155, 165 (Minn. 2009).

On October 27, 2005, a petition was filed for appellant's indeterminate commitment as a SDP and as a sexual psychopathic personality (SPP). During the first day of trial and after four witnesses testified, appellant waived his right to have the matter tried to conclusion and admitted the allegations in the SDP petition; the county dropped the SPP petition. Appellant claims that his attorney coerced him into stipulating to the

SDP petition, but hearing transcripts show that appellant voluntarily waived his right to a trial. He claimed to understand the consequences of the petition and that he was admitting to the SDP petition "with no coercion from [his attorney] or from anyone else." He agreed that he was admitting the SDP petition of his "own free will." There is no evidence showing that appellant was coerced into admitting the SDP petition.

Appellant also claims that his attorney was ineffective because she failed to explain the consequences of the stipulation to him, offer "encouragement," and provide feedback regarding trial strategy. But appellant provides no support for these assertions. *See Voorhees v. State*, 627 N.W.2d 642, 651 (Minn. 2001) (stating that, generally, a reviewing court does not review matters of trial strategy for competence). Thus, appellant's ineffective-assistance-of-counsel claim fails because it was untimely and it lacks merit.

Stipulation

Alternatively, appellant argues that the district court should have permitted him to withdraw his stipulation. He also asserts that because he stipulated to the SDP petition, there are no findings of fact and conclusions of law supporting his indeterminate commitment as a SDP.

Civil-commitment hearings "are civil in nature," not criminal. *In re Commitment of Rannow*, 749 N.W.2d 393, 396 (Minn. App. 2008), *review denied* (Minn. Aug. 5, 2008). "In a civil matter, a stipulation cannot ordinarily be repudiated or withdrawn from by one party without the consent of the other, except by leave of the court for cause shown." *Id.* (quotation omitted). "Stipulations are [] accorded the sanctity of binding

contracts." *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). When interpreting stipulations, the "rules of contract construction apply." *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001). "A contract must be interpreted in a way that gives all of its provisions meaning." *Baker v. Best Buy Stores, LP*, 812 N.W.2d 177, 180 (Minn. App. 2012) (quotation omitted), *review denied* (Minn. Apr. 25, 2012). The district court appropriately denied appellant relief. Appellant admitted to the SDP petition and his stipulation should be enforced because it is a valid agreement.

Appellant also specifically asserts that he should be allowed to withdraw his stipulation because it fails to show that he meets the criteria for civil commitment as a SDP. But the following analysis shows that appellant meets the criteria for indeterminate commitment as a SDP; thus, he fails to show cause as to why he should be allowed to withdraw from the stipulation.

A SDP is a person who (1) "has engaged in a course of harmful sexual conduct"; (2) "has manifested a sexual, personality, or other mental disorder or dysfunction"; and (3) "as a result, is likely to engage in acts of harmful sexual conduct." Minn. Stat. § 253B.02, subd. 18c(a) (2012). "[L]ikely to engage in acts of harmful sexual conduct," *id.*, means "highly likely." *In re Linehan* (*Linehan III*), 557 N.W.2d 171, 180 (Minn. 1996), *vacated on other grounds sub nom. Linehan v. Minn.*, 522 U.S. 1011, 118 S. Ct. 596 (1997), *aff'd on remand sub nom. In re Linehan* (*Linehan IV*), 594 N.W.2d 867 (Minn. 1999). It is not necessary to prove that the person is unable to control his sexual

impulses, Minn. Stat. § 253B.02, subd. 18c(b), the person must lack adequate control of his sexual impulses. *Linehan IV*, 594 N.W.2d at 876.

In determining whether an individual is highly likely to reoffend, courts consider: (1) demographic characteristics, (2) history of violent behavior, (3) base rate statistics, (4) sources of stress, (5) similarity of present or future context to contexts in which the person has used violence in the past, and (6) sex therapy history. *In re Linehan*, 518 N.W.2d 609, 614 (Minn. 1994). No single factor is determinative. *In re Commitment of Navratil*, 799 N.W.2d 643, 649 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011). And courts may consider evidence beyond these factors to determine likelihood to recidivate. *Linehan III*, 557 N.W.2d at 189.

The record amply shows that appellant meets the criteria for SDP commitment. First, he has engaged in a course of harmful sexual conduct. Appellant has a history of criminal sexual conduct spanning 12 years, including: in November 1978, appellant forced a woman into his vehicle at gunpoint and then forced sexual intercourse on her, he was convicted of second-degree criminal sexual conduct; in May 1980, appellant entered a woman's home, put a pillow over her head, forced intercourse on her, and took items from her home, he pleaded guilty to burglary and criminal sexual conduct; in May 1980, appellant forced his girlfriend to perform oral sex on him, he pleaded guilty to this offense; in 1990, appellant touched a woman's buttocks without her permission; in 1993, appellant struggled with a woman in his vehicle while he attempted to force sexual intercourse on her; and in September 1996, appellant forced intercourse on a victim at gunpoint, he pleaded guilty to third-degree criminal sexual conduct.

Second, the record shows that appellant has manifested a sexual, personality, or other mental disorder or dysfunction. Dr. Hector C. Zeller concluded that appellant suffers from "antisocial personality disorder and from sexual sadism." And third, the record shows that appellant is highly likely to engage in acts of harmful sexual conduct. Appellant committed several sexual offenses against women he did not know; he was violent and used a gun; he committed offenses after he served a prison sentence and while on supervised release; he minimized his culpability; appellant has shown "total indifference and disregard for the feelings of his victims and the consequences of his actions"; he "recognizes that what he [has done] . . . is against the law, against the moral conduct of normal behavior and is just wrong, but lacks inhibition to control his criminal impulses"; and he "obtains gratification of a sexual nature by inflicting pain upon his victims."

The district court did not abuse its discretion by refusing to allow appellant to withdraw his stipulation because it is binding and the record fully supports the determination that appellant meets the criteria for indeterminate civil commitment as a SDP.

Polygraph

Appellant next argues that the district court "erred in holding that [a] polygraph was admissible in the initial civil commitment hearing." At the hearing on his rule 60 motion, appellant claimed that a doctor, who agreed to testify on his behalf at the initial commitment hearing, refused to testify after learning that appellant failed a polygraph test. Appellant believed that he had passed the test, and asked his attorney to find the

polygraph results in the hope of persuading the doctor to testify on his behalf. Appellant argued to the district court that the polygraph *was not considered* during the commitment proceedings and that he believed that his attorney should have procured the polygraph results. Appellant now argues that it was an error to hold the polygraph admissible. This argument is confusing because appellant argues both positions. Nonetheless, either way it is presented, appellant's argument is meritless because there is nothing in the record to show that the results of a polygraph were integrated into the stipulation or the district court's commitment order.

Treatment[1]

In his rule 60 motion, appellant argued to the district court that his commitment was "unconstitutional" because the Minnesota Sex Offender Program (MSOP) will not support any patient's discharge, and that because "there is no viable treatment at MSOP, there is no way for [him] to gain his guaranteed right to Life, Liberty and the Pursuit of Happiness." Appellant also argued that because his due-process rights are being violated, the district court "may consider whether [his] place of confinement should be changed or whether [he] should be released from commitment."

The district court, relying on *In re Commitment of Lonergan*, 811 N.W.2d 635 (Minn. 2012), concluded that appellant's arguments sought discharge from the MSOP because he claimed that his commitment was unconstitutional. In *Lonergan*, the supreme

[1] Respondent moved this court to issue a published opinion to address appellant's alleged "inadequacy-of-treatment" claims. While we agree with respondent that this "inadequacy-of-treatment" issue should be addressed in a published opinion, we decline to do so at this time because appellant failed to properly raise the issue in district court.

court stated that when seeking transfer or discharge, "a patient committed as an SDP or SPP must exclusively follow the Commitment Act's specific procedures for petitioning for a transfer or discharge." 811 N.W.2d at 642. Appellant's claims to the district court all relate to transfer or discharge, which cannot be presented in a rule 60 motion; the only means available to address appellant's claims is through the Commitment Act's procedures. *See id.* Therefore, the district court appropriately denied appellant's challenge.

Appellant argues to this court that the MSOP (1) "breached its treatment contract," (2) "failed to meet its treatment obligations under the Minnesota Treatment and Commitment Act," (3) committed "fraud upon the court," (4) illegally confined him "for profit," (5) "exacerbated the punitive nature of the program," and (6) "failed to confine [him] for purposes of treatment." Appellant failed to raise these arguments in the district court. Generally, an appellate court will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Thus, we decline to consider these arguments presented for the first time on appeal.

Affirmed.