STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1554

In the Matter of the Civil Commitment of:
Brad Ronald Stevens.

Filed March 1, 2011
Affirmed
Johnson, Chief Judge

Goodhue County District Court
File No. 25-P9-04-001747

Brad Ronald Stevens, Rush City, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Angela Helseth Kiese, Assistant Attorney General, St. Paul, Minnesota (for respondent State of Minnesota)

Considered and decided by Johnson, Chief Judge; Lansing, Judge; and Minge, Judge.

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

JOHNSON, Chief Judge

In 2005, Brad Ronald Stevens was committed for an indeterminate period of time as a sexually dangerous person. In 2010, Stevens filed a *pro se* motion to vacate the order of commitment. The district court denied the motion. We affirm.

FACTS

Stevens's civil commitment is based on three incidents of criminal sexual conduct. In May 1993, a Martin County jury found Stevens guilty of first-degree criminal sexual conduct for an incident occurring in January 1991. Also in May 1993, Stevens pleaded guilty in Martin County to first-degree criminal sexual conduct for an incident occurring in July or August 1991. The district court imposed concurrent sentences of 134 months of imprisonment for each offense. In March 2003, Stevens pleaded guilty in the Goodhue County District Court to attempted fourth-degree criminal sexual conduct for an incident occurring in November 2002. The district court imposed a sentence of 36 months of imprisonment.

In November 2004, Goodhue County petitioned the district court for an order committing Stevens as a sexually dangerous person (SDP) or a sexual psychopathic personality (SPP). The district court issued an order for initial commitment of Stevens as an SDP in April 2005 and an order for indeterminate commitment in August 2005.

Stevens has unsuccessfully challenged his commitment in this court on prior occasions. In 2005, we denied Stevens's motion for a writ of mandamus that sought, among other things, to compel his immediate release and to compel the district court to consider motions for a new trial or relief from the judgment. Also in 2005, we dismissed Stevens's appeal of his commitment as untimely. In 2008, we affirmed the denial of a petition for a writ of habeas corpus that Stevens had filed in Nicollet County.

Stevens's present appeal arises from a *pro se* motion that he filed in the Goodhue County District Court in May 2010. One month later, Stevens amended his motion to

seek the vacatur of his commitment order pursuant to rule 60.02 of the Minnesota Rules of Civil Procedure. In an affidavit, he stated that, before commitment proceedings, he did not have a "clinically significant psychological disorder needing mental health treatment" and that no such condition was proved during commitment proceedings. In July 2010, the district court denied the motion to vacate, concluding that Stevens's motion was untimely and was an improper means of challenging an order for civil commitment. Stevens appeals.

D E C I S I O N

Stevens argues that the district court erred by denying his rule 60.02 motion. That rule provides that a district court

> may relieve a party or the party's legal representatives from a final judgment (other than a marriage dissolution decree), order, or proceeding . . . for the following reasons:
>
> . . .
>
> (d) The judgment is void;
>
> (e) The judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
>
> (f) Any other reason justifying relief from the operation of the judgment.

Minn. R. Civ. P. 60.02.

Stevens first argues that the district court erred by concluding that his motion is an improper "alternative to the normal judicial review process." This part of the district

court's order relates to Stevens's contention that his ongoing commitment is contrary to chapter 253B of the Minnesota Statutes because, he states, he is not mentally ill. This court recently held that a rule 60.02 motion to vacate is an improper procedural vehicle for an SDP patient to challenge an order for indeterminate commitment. *In re Commitment of Lonergan*, 792 N.W.2d 473, 476 (Minn. App. 2011), *pet. for review filed* (Minn. Jan. 31, 2011). The legislature has specifically provided that an SDP patient may *not* petition a district court for release from commitment on the ground that "the patient is not in need of continued care and treatment." Minn. Stat. § 253B.17, subd. 1 (2010). The legislature instead has provided that an SDP patient may petition a three-member special review board, which is authorized to "hear and consider all petitions for a reduction in custody." Minn. Stat. § 253B.18, subd. 4c (2010); *see also* Minn. Stat. § 253B.185, subd. 9 (2010). Accordingly, in *Lonergan*, we held, "The proper procedure for appellant to seek a reduction in custody is a petition to a special review board, which is specifically authorized by statute." 792 N.W.2d at 477 (citing Minn. Stat. § 253B.18, subd. 5 (2010)). In light of *Lonergan*, the district court properly concluded that Stevens's rule 60.02 motion is an improper procedural vehicle for his contention that he is not in need of treatment.

Stevens also argues that the district court erred by concluding that his motion to vacate is untimely. Because Stevens sought relief under paragraph (d) of rule 60.02, he was required to make his motion "within a reasonable time . . . after the judgment, order, or proceeding was entered or taken." Minn. R. Civ. P. 60.02. Whether a party has filed a motion to vacate within a reasonable time depends on "all of the facts and circumstances

involved." *Simons v. Schiek's Inc.*, 275 Minn. 132, 138, 145 N.W.2d 548, 552 (1966). We apply an abuse-of-discretion standard of review to the district court's determination of untimeliness. *See Roehrdanz v. Brill*, 682 N.W.2d 626, 631 (Minn. 2004).

The district court noted that Stevens waited nearly five years before filing the motion and determined that five years was not a reasonable period of time. In his appellate brief, Stevens does not identify any reason why he did not file his motion sooner. In addition, Stevens does not challenge the district court's determination of untimeliness on any other basis. Thus, Stevens has not demonstrated that the district court abused its discretion by concluding that he did not file his motion to vacate within a reasonable period of time. *See Bode v. Minnesota Dep't of Natural Res.*, 612 N.W.2d 862, 870 (Minn. 2000) (holding that motion to vacate filed 18 years after judgment was not filed within reasonable time because appellants did not offer "satisfactory reasons" for delay); *Osterhus v. King Constr. Co.*, 259 Minn. 391, 397, 107 N.W.2d 526, 530-31 (1961) (holding that motion to vacate filed three years after default judgment was not filed within reasonable time); *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).

Stevens argues further that the district court erred because he was denied his statutory right to counsel during commitment proceedings in 2005. Because Stevens did not raise this argument in the district court, we decline to address it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Stevens also appears to argue that he was denied his statutory right to counsel at the time of his motion to vacate. But Stevens did not have a

right to the assistance of counsel in connection with his rule 60.02 motion. The statute conferring a right to counsel applies only to commitment proceedings. *See* Minn. Stat. § 253B.07, subd. 2c (stating that patient has right to counsel in "any proceeding under this chapter").

In sum, Stevens's motion to vacate the district court's order of commitment is not a proper means of challenging his need for treatment and was not filed within a reasonable period of time.

Affirmed.