

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Detention of)	
JEFFREY LIPTRAP, a/k/a)	No. 63879-3-I
JEFFRY JOHNSON.)	
)	DIVISION ONE
JEFFREY LIPTRAP a/k/a)	
JEFFRY JOHNSON,)	
)	
Appellant,)	
)	UNPUBLISHED OPINION
v.)	
)	FILED: October 11, 2010
STATE OF WASHINGTON,)	
)	
Respondent.)	
_____)	

Becker, J. — Jeffrey Liptrap was civilly committed after a jury found him to be a sexually violent predator in December 2007. About 16 months later, Liptrap moved under CR 60 for a new trial based on newly discovered evidence. The trial court denied the motion. The time limit for bringing a motion under CR 60(b)(3) is one year. Because the motion was untimely, we affirm.

The order committing Liptrap was entered on December 11, 2007. Liptrap brought his CR 60 motion on April 22, 2009. Liptrap submitted evidence of recent changes to actuarial instruments that are used by experts in civil commitment trials to predict a person’s likelihood of reoffending. New

developments in two actuarial instruments, the Static-99 and the Minnesota Sex Offender Screening Tool – Revised (MnSOST-R), indicated that Liptrap would be predicted to have a somewhat lower risk of reoffending than under the older versions of these instruments that were discussed at trial by the State’s expert witness, Dr. Christopher North. Dr. North used the older versions in forming his opinion that Liptrap met the definition of a sexually violent predator. Liptrap argued that he was entitled to relief from judgment based on the newly discovered evidence. The trial court considered Liptrap’s CR 60(b) motion on the merits and denied it.

On appeal, a decision on a CR 60(b) motion to vacate is reviewed for abuse of discretion. Vance v. Offices of Thurston County Comm’rs, 117 Wn. App. 660, 671, 71 P.3d 680 (2003), review denied, 151 Wn.2d 1013 (2004). A court abuses its discretion only when its exercise of discretion is manifestly unreasonable or based on untenable grounds or reasons. Vance, 117 Wn. App. at 671.

CR 60(b)(3) authorizes bringing a motion for a new trial based on newly discovered evidence:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- • • • •
- (3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

CR 60(b) imposes time constraints. For a motion based on newly discovered

evidence, the time limit is one year:

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

CR 60(b).

In the memorandum supporting his CR 60 motion below, Liptrap acknowledged the one year time limit. Nevertheless, the State addressed Liptrap's motion on the merits. After an oral argument in which the parties addressed only the merits, the court denied the motion, concluding that the new evidence would not have changed the outcome of the trial. On appeal, the State defends the trial court's decision both on the merits and on the additional basis that the motion was time barred.

An appellate court may affirm on a ground not raised at trial "if the record has been sufficiently developed to fairly consider the ground." RAP 2.5(a). Because Liptrap himself acknowledged the one year time bar in his trial brief, the record is sufficiently developed to fairly consider the time bar as a ground for affirmance even though the State did not assert it below.

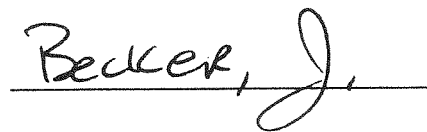
The record indicates Liptrap was diligent in seeking relief once he discovered the evidence. Nevertheless, he remains subject to the requirement that a motion under CR 60(b)(3) must be brought within one year from judgment. Under CR 6(b), a court may not extend the time for taking action under CR

60(b).

Liptrap argues for consideration of his motion under CR 60(b)(11), which does not have a one year time limit. CR 60(b)(11) allows relief for “any other reason justifying relief from the operation of the judgment.” But CR 60(b)(11) is reserved for situations involving extraordinary circumstances not covered by any other section of the rules. In re Marriage of Knutson, 114 Wn. App. 866, 872-873, 60 P.3d 681 (2003). Such circumstances must relate to irregularities extraneous to the action of the court or questions concerning the regularity of the court’s proceedings. Knutson, 114 Wn. App. at 872-73. Liptrap’s motion does not fit within these criteria. CR 60(b)(11) is inapplicable.

We conclude Liptrap’s motion is time barred. We express no view on whether his motion would be successful if it were not time barred. And we express no view on whether he may be able to obtain relief through some other procedural mechanism.

On the ground that the motion is time barred, we affirm the trial court’s decision to deny it.

A handwritten signature in black ink that reads "Becker, J." with a horizontal line underneath the name.

WE CONCUR:

Appelwick J

Cox, J.