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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0122**

In the Matter of the Civil Commitment of: Larry Franklin Dean.

**Filed July 29, 2019
Affirmed
Reyes, Judge**

Clay County District Court
File No. 14-PR-09-3864

Larry Franklin Dean, Moose Lake, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Angela Helseth Kiese, Assistant Attorney General,
St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Pamela Foss, Assistant County Attorney,
Moorhead, Minnesota (for respondent state)

Considered and decided by Slieter, Presiding Judge; Halbrooks, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

REYES, Judge

On appeal from the district court's denial of his motion, made under rule 60.02 of the Minnesota Rules of Civil Procedure, to withdraw his stipulation to his civil commitment, appellant alleges that he did not enter into a valid stipulation and that recent controlled-substance charges against the attorney representing him when he entered the

stipulation show that the attorney provided appellant with ineffective assistance of counsel. We affirm.

FACTS

In September 2009, Clay County filed a petition to have appellant Larry Franklin Dean indeterminately civilly committed to the Minnesota Sex Offender Program (MSOP) as a sexually dangerous person (SDP) and sexually psychopathic personality (SPP) under the Minnesota Commitment and Treatment Act (MCTA). Appellant did not contest the petition and moved to stipulate to his commitment as an SDP. The district court held a hearing on and accepted the stipulation, and subsequently ordered appellant's indeterminate civil commitment in December 2009. The district court appointed counsel to represent appellant during the commitment proceedings.

In February 2018, the state charged appellant's former attorney with first-degree controlled-substance sale and possession. In July 2018, appellant, pro se, filed a motion to withdraw his stipulation as an SDP alleging that he did not enter the stipulation knowingly, voluntarily, or intelligently, and that his attorney provided ineffective assistance of counsel. His arguments were based on his attorney's controlled-substance charges. After holding a hearing on the matter, the district court denied appellant's motion as untimely under Minn. R. Civ. P. 60.02. This appeal follows.

DECISION

I. The district court did not violate appellant's constitutional rights by failing to appoint counsel for appellant's motion to withdraw the stipulation.

Appellant argues that the district court should have appointed counsel to represent him on his motion to withdraw the stipulation. He contends that this court should remand for the appointment of counsel on the ineffective-assistance-of-counsel claim. We disagree.

Whether the district court violated a constitutional right to court-appointed counsel is an issue of law that we review de novo. *State v. Andersen*, 871 N.W.2d 910, 916 (Minn. 2015). This court has recently held that a civilly committed person does not have a constitutional right to counsel in a rule 60.02 motion attacking the validity of a civil-commitment judgment. *In re Civil Commitment of Johnson*, __N.W.2d__, 2019 WL 2495668, *3 (Minn. App. June 17, 2019). Therefore, appellant was not constitutionally entitled to court-appointed counsel on his motion to withdraw the stipulation.¹

¹ Moreover, while a person subject to civil-commitment proceedings has the statutory right to counsel during any proceeding under the MCTA, Minn. Stat. § 253B.07, subd. 2c (2018), a “rule 60.02 motion is not a ‘proceeding’ under the Commitment Act, as that term is used in section 253B.07, subdivision 2c.” *In re Civil Commitment of Moen*, 837 N.W.2d 40, 51 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013). A civilly committed person therefore does not have the statutory right to counsel regarding a rule 60.02 motion. *Id.*

II. The district court did not abuse its discretion by denying appellant’s motion to withdraw his stipulation to commitment as an SDP because it was untimely.

Appellant argues that his motion to withdraw his stipulation is timely under rule 60.02 because he “could not have known at the time of his civil commitment that his attorney was. . . using and selling [drugs].” We disagree.

Rule 60.02 provides a district court discretionary power to grant relief from a final judgment and lists six grounds for relief in clauses (a)-(f). We review a decision to deny rule 60.02 relief for an abuse of discretion. *Cole v. Wutzke*, 884 N.W.2d 634, 637 (Minn. 2016).

Appellant cites rule 60.02, but it is not clear under which clause he seeks relief. He contends that his ineffective-assistance-of-counsel claim is based on “new evidence in the form of a criminal complaint brought against the trial attorney.” Therefore, it appears that he invokes clause (b), which provides that a court may grant relief because of “[n]ewly discovered evidence which by due diligence could not have been discovered in time to move for a new trial pursuant to Rule 59.03.” But he also cites clauses (a), which provides that relief may be granted based on mistake, inadvertence, surprise, or excusable neglect, and clause (c), which provides that relief may be granted based on fraud of an adverse party.² Minn. R. Civ. P. 60.02(a), (c). Rule 60.02 provides that a “motion shall be made

² Whether appellant’s claims may be brought under clause (b) or (c) is questionable because caselaw indicates that ineffective-assistance-of-counsel claims belong in clause (a). See *Chapman v. Special School Dist. No. 1*, 454 N.W.2d 921, 923 (Minn. 1990) (characterizing attorney misconduct as ‘excusable neglect’ properly brought under rule 60.02(a)). And the fraud referred to in clause (c) is the fraud of *the adverse party*, not of one’s own attorney. *Id.* at 924; Minn. R. Civ. P. 60.02(c). Thus, to the extent that appellant alleges fraud against

within a reasonable time and for reasons (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken.”

The district court denied appellant’s motion as untimely under rule 60.02. Appellant’s civil commitment began in December 2009, and he did not bring his motion to withdraw the stipulation until July 23, 2018. Because over eight years had passed from the date of commitment to the date appellant brought the motion, the district court did not abuse its discretion in denying appellant’s motion as untimely. Because the untimeliness of appellant’s claim is fatal to his request for relief, we decline to address appellant’s additional arguments on the merits.

Affirmed.

his attorney, it is irrelevant to the rule 60.02 analysis. In any event, regardless of whether appellant brought the claim under clause (a), (b), or (c), or some combination thereof, his claim is untimely.