

PETITIONER NICOLAISON
APPENDIX

FILED

STATE OF MINNESOTA
IN SUPREME COURT

June 21, 2022

**OFFICE OF
APPELLATE COURTS**

A21-0842

In the Matter of the Civil Commitment
of: Wayne Carl Nicolaison.

O R D E R

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the motion of Wayne Carl Nicolaison for leave to proceed in forma pauperis be, and the same is, granted.

IT IS FURTHER ORDERED that the petition of Wayne Carl Nicolaison for further review be, and the same is, denied.

Dated: June 21, 2022

BY THE COURT:



Lorie S. Gildea
Chief Justice

Petition of Nicolaison Appendix A

STATE OF MINNESOTA
IN COURT OF APPEALS

A21-0842

FILED

April 5, 2022

**OFFICE OF
APPELLATE COURTS**

In the Matter of the Civil Commitment of:

Wayne Carl Nicolaison.

ORDER OPINION

Hennepin County District Court
File No. 27-P7-91-034391

Considered and decided by Reyes, Presiding Judge; Johnson, Judge; and Cochran, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. In 1992, appellant Wayne Nicolaison was indeterminately civilly committed as a sexual psychopathic personality.¹

2. In September 2020, Nicolaison moved the district court, under Minnesota Rule of Civil Procedure 60.02(d), to vacate his 1992 judgment of commitment, arguing that the judgment was void because the district court lacked subject-matter jurisdiction over the commitment. Nicolaison also argued that he could not be civilly committed because

¹ Nicolaison was committed as a psychopathic personality under Minn. Stat. § 526.10 (1990). In 1994, the legislature enacted the sexually-dangerous-person and sexual-psychopathic-personality provisions. 1994 Minn. Laws 1st Spec. Sess. ch. 1, art. 1, §§ 2-7, at 5-9. These provisions renamed psychopathic personalities as sexual psychopathic personalities but did not substantively change the previous provisions. *Id.*, § 5, at 8. Nicolaison is therefore governed by the provisions applicable to sexual psychopathic personalities. See Minn. Stat. §§ 253D.02, subd. 15, .07 (2020) (providing current definition and outlining proceedings for sexual psychopathic personalities).

Nicolaison Appendix B

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he is not mentally ill and because his indeterminate civil commitment violates his right to equal protection under the Fourteenth Amendment of the United States Constitution. The district court rejected Nicolaison's arguments and denied his motion to vacate in a May 2021 order. Nicolaison appeals.

3. We review the district court's denial of a rule 60.02 motion to vacate for an abuse of discretion. *In re Civ. Commitment of Johnson*, 931 N.W.2d 649, 655 (Minn. App. 2019), *rev. denied* (Minn. Sept. 17, 2019). We review jurisdictional questions de novo. *Bode v. Minn. Dep't of Nat. Res.*, 612 N.W.2d 862, 866 (Minn. 2000).

4. A district court may relieve a party from a final judgment when the judgment is void. Minn. R. Civ. P. 60.02(d). A judgment is void for purposes of rule 60.02(d) if the court that issued the judgment lacked jurisdiction over the subject matter. *Bode*, 612 N.W.2d at 866; *see also Matson v. Matson*, 310 N.W.2d 502, 506 (Minn. 1981) ("A void judgment is one rendered in the absence of jurisdiction over the subject matter or the parties."). Subject-matter jurisdiction is defined as a court's "authority to hear and determine a particular class of actions" as well as "the particular questions the court assumes to decide." *Irwin v. Goodno*, 686 N.W.2d 878, 880 (Minn. App. 2004) (quotation omitted).

5. It is well established that state courts have subject-matter jurisdiction over civil commitments. *In re Civ. Commitment of Beaulieu*, 737 N.W.2d 231, 237 (Minn. App. 2007); *see also In re Ivey*, 687 N.W.2d 666, 669 (Minn. App. 2004) ("The district court has subject matter jurisdiction over judicial commitments, including commitments of a person as a sexual psychopathic personality or as a sexually dangerous person."), *rev.*

denied (Minn. Dec. 22, 2004). Nicolaison has not shown that the district court lacked subject-matter jurisdiction over the 1992 judgment of commitment. Thus, the judgment is not void under rule 60.02(d).

6. Additionally, to the extent that Nicolaison seeks to be discharged from commitment, he cannot obtain that relief using a rule 60.02 motion. The Commitment Act provides the exclusive remedy for persons committed as sexual psychopathic personalities to seek a discharge or transfer. *In re Civ. Commitment of Lonergan*, 811 N.W.2d 635, 642 (Minn. 2012).

7. Nicolaison raises several additional arguments in his appellate brief, some of which he also argued in his motion to vacate. He argues that he cannot be civilly committed because he does not meet the definition of “mentally ill,” his prior counsel was ineffective, other states do not impose civil commitment under the same criteria, and the civil commitment violates his constitutional due-process rights. None of these arguments show that the 1992 judgment of commitment is void, as necessary to warrant relief under rule 60.02(d). *See Majestic Inc. v. Berry*, 593 N.W.2d 251, 257 (Minn. App. 1999) (“[A] judgment is not void merely because it is erroneous.” (quotation omitted)), *rev. denied* (Minn. Aug. 18, 1999). As such, we need not address these arguments. The district court properly dismissed Nicolaison’s rule 60.02(d) motion to vacate.

IT IS HEREBY ORDERED:

1. The district court’s order is affirmed.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: April 5, 2022

BY THE COURT

Jeanne M. Cochran
Judge Jeanne M. Cochran

STATE OF MINNESOTA
COUNTY OF HENNEPIN

In the Matter of the Civil Commitment of

Wayne Carl Nicolaison,
DOB: 10/14/1950

Respondent.

FOURTH JUDICIAL DISTRICT
DISTRICT COURT
PROBATE/MENTAL HEALTH DIVISION

File No. 27-P7-91-034391

ORDER DENYING RESPONDENT'S
MOTION TO VACATE JUDGMENT
OF COMMITMENT

This matter came on for a motion hearing before the undersigned judge of district court on March 2, 2021. Matthew Hough, Assistant Hennepin County Attorney, appeared on behalf of Petitioner, Terry M. O'Neill. Respondent appeared *pro se*. Mark Gray, Respondent's former attorney, was also present. All appearances were made remotely using the Zoom video platform.

Based on the arguments and submissions of the parties, and the available record, the court enters the following:

ORDER

1. Plaintiff's Rule 60.02(d) Motion to Vacate Judgment of Commitment is **DENIED**.
2. The attached Memorandum is incorporated herein.

BY THE COURT

Date: May 14, 2021



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Judge of District Court

Nicolaison, AP/med. x C

MEMORANDUM

Factual Background

Respondent was involuntarily civilly committed by the Hennepin County District Court as a Sexually Psychopathic Personality on January 8, 1992.¹ He was indeterminately civilly committed on June 9, 1992.

On September 30, 2020, Respondent filed a Motion for Relief of Judgment Pursuant to Minn. R. Civ. P. 60.02(d). Respondent moved to vacate his judgment of commitment arguing the court lacked subject-matter jurisdiction over his civil commitment, rendering the judgment as void, and that his civil commitment is unconstitutional in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because there was no finding that Respondent is “mentally ill.” Respondent’s Motion for Relief from Judgment was set for hearing on January 5, 2021. Pursuant to agreement by the parties, the matter was continued to March 2, 2021.

Analysis

I. Jurisdiction

Respondent is seeking to vacate his judgment of commitment, arguing the court lacked subject-matter jurisdiction over his civil commitment case, which renders the judgment as void. Under Rule 60.02 of the Minnesota Rules of Civil Procedure, the court may relieve a party from judgment when “the judgment is void.” Minn. R. Civ. P. 60.02(d). A judgment is void if it was

¹ Respondent was civilly committed as a Psychopathic Personality (“PP”); however, in 1994 the Legislature enacted the Sexually Psychopathic Personality (“SPP”) and Sexually Dangerous Person (“SDP”) provisions. The SPP provisions replaced the PP provisions and renamed Psychopathic Personalities as Sexually Psychopathic Personalities. Act of Aug. 31, 1994, 1st Spec. Sess., ch. 1, art. 1, §§ 2, 4-6, 1995 Minn. Laws 5, 6-9. The SPP provisions were not intended to make any substantive change to the PP provisions. Id. § 5, 1995 Minn. Laws 5, 8. For clarity, Respondent’s commitment will be referred to as a SPP commitment, as the SPP provisions govern despite Respondent being committed as PP.

issued by a court that lacked subject-matter jurisdiction. *Matson v. Matson*, 310 N.W.2d 502, 506 (Minn. 1981). “Subject matter jurisdiction is the court’s authority to hear the type of dispute at issue and to grant the type of relief sought.” *Seehus v. Bor-Son Constr., Inc.*, 783 N.W.2d 144, 147 (Minn. 2010). “The district court has subject matter jurisdiction over judicial commitments, including commitments of a person as a sexual psychopathic personality or as a sexually dangerous person.” *In re Ivey*, 687 N.W.2d 666, 669 (Minn. Ct. App. 2004); *see also State ex rel. Anderson v. United States Veterans Hosp.*, 128 N.W.2d 710, 715 (Minn. 1964) (“The fact that the probate court has jurisdiction over commitment proceedings by virtue of our constitution has long been established.”).

The burden of proof under Rule 60.02 is on Respondent, as the party seeking relief. *City of Barnum v. Sabri*, 657 N.W.2d 201, 205 (Minn. Ct. App. 2003). Respondent did not offer any argument or proof as to why the Hennepin County District Court did not have subject-matter jurisdiction other than to make the blanket statement in his Rule 60.02 motion that the committing court lacked subject-matter jurisdiction. As previously stated, district courts have subject matter jurisdiction in civil commitment cases. Further, according to the June 9, 1992 Order indeterminately civilly committing Respondent, which was Exhibit A to Respondent’s Rule 60.02 motion, his case was heard and decided by a judge of the Hennepin County district court, the court which had subject-matter jurisdiction over his commitment proceedings.

II. Timeliness

Respondent filed his Rule 60.02(d) motion 28 years after judgment was entered. A motion pursuant to Rule 60.02(d) “shall be made within a reasonable time.” Minn. R. Civ. P. 60.02. The determination of the reasonableness of time for bringing a motion under Rule 60.02(d) is made by “considering all attendant 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.” *Bode v. Minn. Dep’t of Nat. Res.*, 612 N.W.2d 862, 870 (Minn. 2000) (quotation omitted). Respondent has offered no reason or explanation as to why he waited 28 years to bring his motion challenging subject-matter jurisdiction. Therefore, the “general desirability that judgments be final” supports denial of Respondent’s motion as untimely, though the court will examine his substantive arguments.

III. Constitutionality

Respondent seeks to vacate his judgment of commitment on the basis that the judgment violates the Equal Protection Clause of the United States Constitution and is unconstitutional because it is “not duly founded upon a recognizable ‘mental illness/disorder’ but is solely founded upon his State of residence.” (Mot. for Relief from Judgment, ¶ 6; emphasis in original). Respondent argues that for him to be committed as a sexual psychopathic personality, the court had to make a finding that Respondent had a mental illness or disorder, and that without such a finding, Respondent’s commitment could only be based on his state of residence because other states do not commit sex offenders.² (See Mot. for Relief from Judgment, ¶¶ 5–6.) In support of his argument, Respondent cites *Kansas v. Crane*, 534 U.S. 407 (2002); *Kansas v. Hendricks*, 521 U.S. 346 (1997); *Foucha v. Louisiana*, 504 U.S. 71 (1991); and *State of Minn. Ex rel. Pearson v. Probate Court of Ramsey Cnty.*, 309 U.S. 270 (1940).

² Respondent’s argument that the judgment is unconstitutional, as there was no finding of mental illness, and his Equal Protection argument appear to be one in the same. He apparently is arguing that the court did not find him to have a mental illness, so there is no basis for his commitment other than the fact that Minnesota and some states commit sex offenders while other states do not, which he apparently argues is an equal protection violation.

As a preliminary matter, each State has the right to enact its own civil commitment laws, which may vary from state to state.³ Respondent's constitutional argument appears to be based on a misunderstanding of Minnesota's criteria for civil commitment of sexual psychopathic personalities. Respondent was civilly committed as a psychopathic personality, the predecessor to sexual psychopathic personality. The commitment was under Minn. Stat § 526.10, which defined a psychopathic personality as "the existence in any person of such conditions of emotional instability, impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or combination of any such conditions, as to render such person irresponsible for personal conduct with respect to sexual matters and thereby dangerous to other persons."⁴ The criteria for Respondent's civil commitment does not require a specific finding of a "mental illness/disorder." *See id.*⁵

³ The Tenth Amendment to the United States Constitution provides that powers are reserved to the States if not delegated to the federal government. "The Federal government has no constitutional or inherent power to [civilly] commit." *Fahey v. U.S.*, 153 F.Supp. 878, 884 (S.D.N.Y. 1957) (authorities omitted); *see also Dixon v. Steele*, 104 F.Supp. 904, 908 (W.D. Mo. 1951) (right to confine persons under civil commitment is confined to the states). Therefore, each state has the power to enact its own civil commitment laws, which need not be the same from state to state.

⁴ Minn. Stat. § 526.10 was repealed by the Legislature in 1994 as previously stated. In its place, Minn. Stat. § 253D.07 was enacted which provides courts may commit persons if they meet the criteria for a sexual psychopathic personality, which is defined by Minn. Stat. § 253D.02, subd. 15, as "a person who: (1) has engaged in a course of harmful sexual conduct as defined in subdivision 8; (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 as defined in subdivision 8."

⁵ In his Motion, Respondent references statutes under which procedural provisions that apply to persons who are mentally ill and dangerous to the public also apply to persons who are sexual psychopathic personalities. (Motion for Relief from Judgment, ¶1 n.2). However, that the same procedures may apply to sexual psychopathic personalities as to persons who are mentally ill and dangerous to the public does not mean that sexual psychopathic personalities are subject to the same commitment criteria as persons who are mentally ill and dangerous to the public where those criteria are defined differently.

The Equal Protection Clause of the Fourteenth Amendment did not require the district court to make a specific finding of a mental illness/disorder in order to civilly commit Respondent as a sexual psychopathic personality. The authorities cited by Respondent in his Motion support this position. *See Hendricks*, 521 U.S. at 359 (upholding sexual psychopathic personality commitment statute that did not use the term “mental illness” but instead link future dangerous to a mental abnormality or personality disorder); *Crane*, 534 U.S. at 411–12 (revisiting the Kansas statute from *Hendricks* and holding that courts did not need to make a finding it was “impossible” for respondents to control their behavior, only that a mental disorder made it difficult to do so); *Pearson*, 309 U.S. at 277 (addressing Minnesota’s psychopathic personality statute, stating, “Nor do we think the psychopathic personality statute violates equal protection.”).⁶ Here, Respondent was committed as a psychopathic personality and the district court made the required statutory findings that Respondent suffered from emotional instability, specifically a personality disorder, could not control his behavior, and as a result, was dangerous to the public. (Order for Commitment, Jan. 8, 1992, at 16.) Respondent was committed based on criteria that has consistently been upheld against equal protection challenges and he was not committed simply because he lives in Minnesota. Respondent’s civil commitment will not be vacated as unconstitutional.

Conclusion

For the foregoing reasons, Respondent’s Motion to Vacate is **DENIED**.

⁶ Respondent’s reliance on *Foucha* is misplaced because that case involved commitment of a person as mentally ill and dangerous and did not involve commitment of a person as a sexual psychopathic personality. 504 U.S. at 80.