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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-2195**

In the Matter of the Civil Commitment of:  
Ming Sen Shiue.

**Filed June 16, 2014  
Affirmed  
Kirk, Judge**

Anoka County District Court  
File No. 02-PR-09-545

Ming Sen Shiue, Marion, Illinois (pro se appellant)

Anthony C. Palumbo, Anoka County Attorney, Francine P. Mocchi, Assistant County Attorney, Anoka, Minnesota (for respondent Anoka County)

Considered and decided by Hooten, Presiding Judge; Kirk, Judge; and Reyes, Judge.

**UNPUBLISHED OPINION**

**KIRK**, Judge

Appellant challenges the district court's order denying his motion for relief from his civil commitment under Minn. R. Civ. P. 60.02. We affirm.

## DECISION

This court reviews a district court's refusal to grant relief under Minn. R. Civ. P. 60.02 for an abuse of discretion. *In re Civil Commitment of Moen*, 837 N.W.2d 40, 44-45 (Minn. App. 2013), *review denied* (Minn. Oct. 15, 2013). The Minnesota Supreme Court held in *In re Civil Commitment of Lonergan* that rule 60.02 motions seeking relief from civil commitment are barred if the motion (1) distinctly conflicts with the Minnesota Commitment and Treatment Act, or (2) frustrates a patient's rehabilitation or the protection of the public. 811 N.W.2d 635, 641 (Minn. 2012). In this case, appellant is classified as a sexually dangerous person or sexual psychopathic personality. Therefore, under *Lonergan*, he can only bring "a narrow class of claims" under rule 60.02, such as lack of jurisdiction and ineffective assistance of counsel, because they do not specifically request transfer or discharge. *Id.* at 643.

Appellant's crimes were thoroughly documented in his direct appeal to this court. *In re Civil Commitment of Shiue*, No. A10-2006, 2011 WL 1546607 (Minn. App. Apr. 26, 2011), *review denied* (Minn. June 28, 2011).

### **I. The district court did not violate appellant's due-process rights.**

As a federal inmate without a definite release date, appellant is ineligible to participate in sex offender therapy. Appellant argues that the district court violated his substantive due-process rights because it unfairly used his lack of participation in therapy as grounds for his commitment. Appellant also contends that had he been granted access to therapy, he could have proved to the district court that his commitment was unnecessary.

The district court acted properly when it rejected appellant's arguments. Because appellant's claims were previously raised to and denied by this court in *Shiue*, 2011 WL 1546607, at \*9, they are now barred under the doctrine of res judicata. *See State v. Joseph*, 636 N.W.2d 322, 327 (Minn. 2001) (stating doctrine applies if earlier claim involved: (1) the same claim for relief; (2) the same parties; (3) there was a final judgment on the merits; and (4) the estopped party had a full and fair opportunity to litigate the matter).

**II. The district court properly denied appellant's subject-matter jurisdiction and venue arguments.**

Appellant's argument that Anoka County lacked subject-matter jurisdiction to file a petition to civilly commit him is without merit. There is no language in the legal authority cited by appellant that limits the state's jurisdiction to initiate civil commitment proceedings against him. *See* 18 U.S.C. § 4247(a)(6); *United States v. Comstock*, 560 U.S. 126, 130 S. Ct. 1949 (2010); *Kansas v. Hendricks*, 521 U.S. 346, 117 S. Ct. 2072 (1997).

Appellant remains in the legal custody of the Minnesota Commissioner of Corrections while he serves his concurrent federal and state sentences in federal prison. *See* Minn. Stat. § 243.05, subd. 6(a) (2012) (stating that an inmate is in the legal custody of the commissioner of corrections while on parole); *State v. Schwartz*, 628 N.W.2d 134, 138-39 (Minn. 2001) (providing that an offender on supervised release remains in state's legal custody). The state may file a petition to civilly commit appellant while he serves his concurrent sentence. *See* Minn. Stat. § 253B.18, subd. 2 (2012) (providing that a

commitment may be initiated while a person is in the custody of the commissioner of corrections).

Appellant's argument that Anoka County was not the proper venue for his civil commitment proceeding is also without merit because he agreed in a pretrial submission to the district court that Anoka County was the proper venue. Appellant has waived the right to challenge venue now. *See State v. Blooflat*, 524 N.W.2d 482, 483 (Minn. App. 1994) (holding that an objection to venue not made before trial is waived). Moreover, appellant fails to show any prejudice resulting from venue in Anoka County. *State v. Chambers*, 589 N.W.2d 466, 473 (Minn. 1999).

### **III. Appellant waived his comity and personal jurisdiction arguments.**

Appellant has waived his arguments regarding comity and personal jurisdiction because he failed to raise them before the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that this court generally will not consider matters not argued to and considered by the district court); *In re Ivey*, 687 N.W.2d 666, 670 (Minn. App. 2004) (stating that a defense of lack of personal jurisdiction can be waived).

### **IV. The district court properly denied appellant's motion for appointment of counsel.**

The district court did not abuse its discretion when it denied appellant's motion for appointment of counsel. A rule 60.02 motion is not a proceeding under the Commitment Act, and appellant is not entitled to the appointment of counsel. *Cf. Minn. Stat. § 253B.07, subd. 2c* (2012) (stating that patient has right to counsel in "any proceeding under this chapter").

Appellant's remaining arguments are waived because they either lack legal authority or are outside of the record. *See* Minn. R. Crim. P. 28.02, subd. 8; *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (stating if a brief does not contain an argument or citation to legal authority in support of the allegation, the allegation is considered to be waived).

**Affirmed.**