259 P.3d 748 (Table), 2011 WL 4031553 (Kan.App.)
Unpublished Disposition
Briefs and Other Related Documents
Judges and Attorneys

Court of Appeals of Kansas.
In the Matter of the Care and Treatment of Richard A. QUILLEN.

No. 104,720.
Sept. 9, 2011.
Review Denied Feb. 3, 2012.

Appeal from Johnson District Court; Thomas H. Bornholdt, Judge.
Richard A. Quillen, appellant pro se.

Steven J. Obermeier, assistant district attorney, Stephen M. Howe, district attorney, and Derek Schmidt, attorney general, for appellee.

Before GREENE, C.J., MALONE and BRUNS, JJ.

MEMORANDUM OPINION

PER CURIAM.

***1** Richard A. Quillen appeals the district court's denial of his K.S .A. 60–260(b) motion, challenging on multiple grounds the district court's jurisdiction to commit him as a sexually violent predator. After exhaustive consideration and rejection of Quillen's numerous procedural challenges, we affirm the district court.

FACTUAL AND PROCEDURAL BACKGROUND

On January 25, 2006, the State filed a petition alleging that Quillen was a sexually violent predator under the Kansas Sexually Violent Predator Act (KSVPA), K.S.A. 59–29a01 *et seq.* The State alleged that Quillen had been convicted of two counts of aggravated indecent solicitation in 1999 and that there was sufficient evidence that he suffered from a mental abnormality or personality disorder that made him likely to engage in repeat acts of

violence. Quillen stipulated that all the allegations in the State's petition were true and that he was a sexually violent predator as set forth in the KSVPA. The trial court accepted Quillen's stipulation, found the allegations in the State's petition to be true, and deemed Quillen a sexually violent predator. Quillen was committed for treatment at Larned State Security Hospital.

On May 25, 2010, Quillen filed a K.S.A. 60–260(b) motion for relief from judgment. Quillen presented four grounds for relief in his motion:

1. The State failed to timely file the petition for commitment, meaning that the district court lacked jurisdiction to deem him a sexually violent predator.

2. The stipulation he had entered was not allowed by the KSVPA and was improper because it vested Johnson County with jurisdiction it would not have otherwise had.

3. Housing him in county jail while awaiting the sexually violent predator proceedings constituted punishment, which therefore violated his rights under the Fourteenth Amendment to the United States Constitution.

4. The district court failed to find beyond a reasonable doubt that he suffered from a mental abnormality or personality disorder.

The district court denied Quillen's motion on all counts. Quillen appeals.

STANDARDS OF REVIEW

Quillen captioned his motion as filed pursuant to K.S.A. 60–260(b), which provides:

"On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under subsection (b) of K.S.A. 60–259, and amendments thereto; (3) fraud, (whether heretofore denominated intrinsic or extrinsic), misrepresentation or misconduct by an opposing party; (4) the judgment is void; (5) 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 (6) any other reason that justifies relief from ... the judgment."

***2** K.S.A. 60–260(b) is not intended as an alternative means of appellate review, nor is it intended to provide a procedure for attacking a purported legal error of the court. *Neagle v. Brooks,* 203 Kan. 323, 327, 454 P.2d 544 (1969). Moreover, Quillen has failed to cite which subsection of K.S.A. 60–260(b) entitles him to relief. Nonetheless, appellate courts liberally construe pro se pleadings. See, *e.g., State v. Kelly,* 291 Kan. 563, 565, 244 P.3d 639 (2010) ("Pro se pleadings are liberally construed, giving effect to the pleading's content rather than the labels and forms used to articulate the defendant's arguments. A defendant's failure to cite the correct statutory grounds for his or her claim is immaterial."). Because Quillen essentially claims the district court had no jurisdiction to commit him under the KSVPA, we proceed to address his claims as arising under K.S.A. 60–260(b)(4).

Appellate courts generally review a district court's decision on a K.S.A. 60–260(b) motion for abuse of discretion. *In re Marriage of Laine,* 34 Kan.App.2d 519, 522, 120 P.3d 802 (2005), *rev. denied* 281 Kan. 1378 (2006). This is not so when a judgment is attacked as void under K.S.A. 60–260(b)(4). A judgment is void and therefore a nullity if a court lacked jurisdiction to render it or acted in a manner inconsistent with due process. A district court has no discretion to exercise in such a case; either a judgment is valid or it is void as a matter of law. Thus, a reviewing appellate court must apply a de novo standard once a district court has made any necessary findings of fact. *In re Adoption of A.A.T.,* 287 Kan. 590, 598, 196 P.3d 1180 (2008), *cert. denied* 129 S.Ct. 2013 (2009).

DID THE DISTRICT COURT HAVE JURISDICTION TO ACCEPT QUILLEN'S STIPULATION TO BEING A SEXUALLY VIOLENT PREDATOR?

Although not framed in so many words, most of Quillen's nine challenges to the district court's judgment are essentially an attack on the court's jurisdiction to commit him based upon his stipulation. Reframing these challenges in specific terms, Quillen argues:

1. The trial court "failed to find whether a mental abnormality or personality disorder was present," causing Quillen to be confined in violation of his constitutional rights;

2. The trial court erred in accepting the stipulation because Quillen is not an expert witness qualified to know whether he does in fact suffer from a mental abnormality or personality disorder;

3. The trial court lacked jurisdiction to accept the stipulation because the State failed to adhere to statutory timelines for the filing of proceedings;

4. The trial court erred in accepting the stipulation because the KSVPA requires a respondent be put on trial before the he or she can be committed as a sexually violent predator; and

5. The trial court erred in accepting the stipulation because a stipulation cannot be used to answer questions of law.

Failure to Find Statutory Prerequisites?

***3** The State alleged in its petition that Quillen "suffers from a mental abnormality or personality disorder which makes him likely to engage in repeat acts of violence." Quillen subsequently stipulated that *all* the allegations in the petition were true and that he *was* a sexually violent predator as set out in the KSVPA. The district court accepted Quillen's stipulation, found the allegations in the State's petition to be true, and deemed Quillen a sexually violent predator under K.S.A. 59–29a01 *et seq.*

As a result of his stipulation, Quillen cannot now challenge the substantive aspects thereof. A person's consent and stipulation that he or she is a sexually violent predator amounts to an acquiescence in the judgment. A party is bound by a judgment premised on a stipulation or consent and cannot appeal from a judgment to which he or she has acquiesced. *In re Care and Treatment of Saathoff,* 272 Kan. 219, 220, 32 P.3d 1173 (2001).

Error to Accept Stipulation Because Quillen Not an Expert in Such Matters?

Quillen's claim that the trial court erred in accepting the stipulation because he is not an expert in psychology fails because there is no statutory requirement that his condition be established by a qualified expert either at the probable cause hearing (K.S.A.59–29a05) or at final determination K.S.A.2010 Supp. 59–29a07. In fact, the statute contemplates that the State may simply rely on the naked allegations of the petition itself. As the district court noted, a person can stipulate to being a sexually violent predator without being an expert in psychology in the same way a defendant can stipulate to being guilty of a drug charge without being a chemist.

Failure to Adhere to Statutory Timeline?

Quillen contends the State filed civil confinement proceedings prematurely, citing K.S.A. 59–29a03(a), which states that "the agency with jurisdiction shall give written notice [that a person appears to be a sexually violent predator] 90 days prior to" release of the person from confinement.

See K.S.A. 59–29a03(a)(1)–(4). This argument fails for four reasons. *First,* the 90–day notice requirement in the statute does not expressly prohibit commencement of proceedings earlier, but rather serves to assure adequate notice before release of the subject person. As our Supreme Court has stated: "[A] SVPA action may be commenced at *any time that a respondent is serving any part of the 'complete sentence'* which 'includes ... a period of postrelease supervision.' [Citation omitted.]" (Emphasis added). *In re Care & Treatment of Sporn,* 289 Kan. 681, 685, 215 P.3d 615 (2009). *Second,* the State's petition was filed on January 25, 2006, and alleged that Quillen was scheduled to be released on March 20, 2006, about 55 days away. Quillen stipulated that this allegation was true. *Third,* Quillen claims that he was scheduled to be released 3 years from when proceedings were filed against him, but he has not supported this claim with any citation to the record. "An appellant has the burden to designate a record sufficient to establish the claimed error; without such a record, the claim of error fails. [Citation omitted.]" *Kelly v. VinZant,* 287 Kan. 509, 526, 197 P.3d 803 (2008). *Fourth* and finally, even if the State jumped the gun with regard to the statutory timeframes, the error would have no impact on the trial court's jurisdiction. K.S.A. 59–29a03(f) and K.S.A. 59–29a04(b) state that the timeline provisions "are not jurisdictional, and failure to comply with such provisions in no way prevents the attorney general from proceeding against a person" who is subject to the KSVPA. For these reasons, Quillen's jurisdictional arguments based on the timing of the State's petition must be rejected.

Failure to Receive a Trial?

***4** Quillen's argument that the KSVPA requires a respondent be put on trial before he or she can be committed as a sexually violent predator fails under *Saathoff,* 272 Kan. at 220, which permits a respondent to stipulate to being a sexually violent predator without a trial.

Valid Stipulation to Matter of Law?

Quillen's suggestion that there can be no valid stipulation to matters of law is specious; the key matters to which he stipulated were matters of fact. Moreover, as noted above, our Supreme Court has held that a person can indeed stipulate to being a sexually violent predator, and when such a stipulation is offered by the alleged predator, that person may not thereafter challenge or appeal the resulting judgment. See *Saathoff,* 272 Kan. at 220.

WERE QUILLEN'S CONSTITUTIONAL RIGHTS VIOLATED WHEN HE WAS PLACED IN COUNTY JAIL AWAITING THE PROCEEDINGS BELOW?

Quillen next argues that his placement in county jail while awaiting these proceedings in district court violated his constitutional rights. Because

Quillen is no longer so confined, this claim is moot. See *State v. Shadden*, 40 Kan.App.2d 1103, 1121, 199 P.3d 167 (2009), *rev'd on other grounds* 290 Kan. 803, 235 P.3d 436 (2010). Moreover, this argument fails on its merits because the KSVPA specifically authorizes the trial court to house a charged sexually violent predator in a secure facility, including a county jail. K.S.A. 59–29a05(d). Thus, Quillen's arguments on this issue were correctly rejected by the district court.

DID THE DISTRICT COURT ERR IN RELYING ON AN UNPUBLISHED OPINION FROM THIS COURT?

Finally, Quillen argues the district court erred when it cited and relied on an unpublished opinion of this court in denying some of his claims. We disagree. Unpublished opinions are not binding precedent and are not favored for citation, but they can be used if they have persuasive value concerning a material issue not addressed in a published opinion and if they assist the court in deciding the case. See Supreme Court Rule 7.04(f)(2) (2010 Kan. Ct. R. Annot. 55); *Riverside Drainage Dist. of Sedgwick County v. Hunt*, 33 Kan.App.2d 225, 231, 99 P.3d 1135 (2004). The district court did not err in relying on an unpublished opinion of this court.

Affirmed.

Kan.App.,2011.
In re Quillen
259 P.3d 748 (Table), 2011 WL 4031553 (Kan.App.)
Unpublished Disposition

Briefs and Other Related Documents (Back to top)

- 2011 WL 1368830 (Appellate Brief) Brief of Appellee (Feb. 24, 2011)
- 104720 (Docket) (Aug. 5, 2010)

Judges and Attorneys (Back to top)

Judges | Attorneys

Judges

- **Bornholdt, Hon. Thomas H.**
State of Kansas District Court, 10th District
Olathe, Kansas 66061
Litigation History Report | Judicial Reversal Report | Profiler

- **Bruns, Hon. David E.**
State of Kansas Court of Appeals