

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 26, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 99-1781-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE MATTER OF THE MENTAL
COMMITMENT OF GREY B.**

BROWN COUNTY,

PLAINTIFF-RESPONDENT,

V.

GREY B.,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Brown County: WILLIAM M. ATKINSON, Judge. *Affirmed.*

¶1 CANE, C.J. Grey B. appeals from a judgment and an order extending his involuntary commitment for one year under § 51.20(1)(am), STATS.¹

¹ This is an expedited appeal under RULE 809.17, STATS.

Grey additionally appeals from the order denying his motion for post-judgment relief. Contending that a medical examiner cannot make an independent and unbiased determination from one year to the next, Grey argues that his trial counsel was ineffective by: (1) failing to request that Grey be examined by someone other than the psychiatrist who had examined him the previous year; and (2) failing to inform the jury that the same psychiatrist had examined him for two consecutive years. Because this court disagrees with the premise upon which Grey's ineffective assistance of counsel claim is based, the judgment and order are affirmed.

¶2 Grey was originally committed under ch. 51, STATS., in October 1988. In October 1998, after several repeated six-month and one-year commitments, Brown County petitioned for an extension of Grey's commitment under § 51.20(1)(am), STATS., which provides that an individual may be subject to continued involuntary commitment for treatment if it is shown "that there is a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn."

¶3 In order to determine Grey's mental condition, the court appointed Drs. George Soncrant and Ursula S. Bertrand to examine him. Both Soncrant and Bertrand ultimately examined Grey, submitted their reports to the court and testified, consistent with the statute's requirements, of the substantial likelihood that if Grey were withdrawn from treatment, he would again become a proper subject for commitment. Additionally, when asked if he remembered examining Grey in November 1997, Soncrant responded that he did not recall meeting with Grey the previous year. The trial court, consistent with the jury's verdict,

ultimately extended Grey's commitment for one year. Grey's motion for post-judgment relief was denied and this appeal followed.

¶4 Grey's contentions arise from the fact that Dr. George Soncrant, a psychiatrist, had examined him and recommended extending Grey's involuntary commitment in both 1997 and 1998. However, the record does not clarify whether Soncrant's recommendation for continued commitment was considered or even introduced to the 1997 jury. Regardless, Grey contends that a conflict of interest must be presumed where the same doctor, in consecutive years, examines the subject of a mental commitment proceeding. Grey argues, in essence, that because Soncrant found him mentally ill in 1997, Soncrant would not, the following year, issue an opinion different from his prior year's assessment. Grey therefore contends that Soncrant, by virtue of his previous year's assessment, had a conflict of interest rendering his 1998 examination less than independent and, thus, less credible. Further, based on this mistaken premise, Grey asserts that his trial counsel was ineffective by failing to object to Soncrant's appointment and by failing to bring the "conflict of interest" problem to the jury's attention. Grey is mistaken.

¶5 To succeed on his claim of ineffective assistance of counsel, Grey "must show both (1) that his counsel's representation was deficient and (2) that this deficiency prejudiced him so that there is a 'probability sufficient to undermine the confidence in the outcome' of the case." *State v. Erickson*, 227 Wis.2d 758, 768, 596 N.W.2d 749, 755 (1999) (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). There is nothing to suggest, nor does Grey cite any authority to support his contention that Soncrant would repeat his prognosis from the previous year simply because he found Grey mentally ill at that time. This is especially evident where, as here, Soncrant did not recall examining

Grey the previous year. Because no conflict of interest will be presumed merely because the same doctor assesses one's mental illness in consecutive years, there was no deficiency on the part of Grey's trial counsel in failing to either object to Soncrant's appointment or to bring the asserted "conflict of interest" problem to the jury's attention.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

