

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 26, 2014

Diane M. Fremgen
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP2483

Cir. Ct. No. 2007CI1

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE COMMITMENT OF CHRISTOPHER J. SEELEY:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

CHRISTOPHER J. SEELEY,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Eau Claire County:
WILLIAM M. GABLER, SR., Judge. *Affirmed.*

Before Hoover, P.J., Stark, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Christopher Seeley appeals an order denying his petition for discharge and continuing his WIS. STAT. ch. 980¹ commitment. Seeley also appeals both the order denying his postcommitment motion for a new trial and the order denying his motion for reconsideration. Seeley argues the circuit court erred by ordering a jury trial under WIS. STAT. § 980.095(1) when no jury trial request was made by the parties. We reject Seeley’s argument and affirm the orders.

BACKGROUND

¶2 In November 2008, Seeley was committed as a sexually violent person under WIS. STAT. ch. 980. Relevant to this appeal, Seeley filed a petition for discharge in July 2011. After determining Seeley was entitled to a fact-finding hearing on his discharge petition, the court acknowledged no jury demand was made but nevertheless determined a six-person jury would hear the case. After an evidentiary hearing, the jury returned a verdict finding that Seeley still met the criteria for commitment as a sexually violent person and the court entered an order for continued commitment. Seeley filed a postcommitment motion for a new trial. The circuit court denied that motion and a subsequent reconsideration motion. This appeal follows.

DISCUSSION

¶3 Seeley argues the circuit court erred by ordering a jury trial when no jury trial request was made by the parties. It is undisputed, however, that Seeley

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

failed to object to the circuit court’s decision to empanel a jury. The State consequently asserts that Seeley has forfeited this argument. The forfeiture rule facilitates fair and orderly administration of justice and encourages parties to be vigilant lest they lose a right by failing to object to its denial. *State v. Ndina*, 2009 WI 21, ¶30, 315 Wis. 2d 653, 761 N.W.2d 612. “Contemporaneous objections give judges the opportunity to remedy an error so that it does not fester beneath the proceedings and infect the judgment of the court.” *State v. Pinno*, 2014 WI 74, ¶56.

¶4 Citing *Quinn v. State*, 53 Wis. 2d 821, 827, 193 N.W.2d 665 (1972), Seeley attempts to circumvent the forfeiture rule by claiming that trial counsel was not obligated to object when she knew an objection would have been “an exercise in futility.”² *Quinn*, however, is distinguishable on its facts. There, the cases of Quinn and a co-defendant were heard together during pre-trial proceedings. *Id.* Counsel for the co-defendant made numerous pre-trial motions, all of which were denied. *Id.* Although Quinn’s counsel made no pre-trial motions, the court noted that Quinn had the same defenses that were raised by his co-defendant and rejected by the trial court. *Id.* The *Quinn* court, therefore, concluded it would have been “an exercise in futility” for counsel to raise the same questions previously rejected. *Id.*

¶5 Unlike *Quinn*, Seeley’s challenge would not have been cumulative, as there had been no objection to the court’s decision to impanel a jury. The court

² Trial counsel averred that after requesting a court trial during an off-the-record discussion with the court, the court indicated there would be a jury trial. Counsel indicated that based on her “past experiences with the court,” she “knew that no further discussion or argument regarding the court trial would be considered.”

was therefore deprived of a “fair opportunity to address the objection.” *See State v. Huebner*, 2000 WI 59, ¶12, 235 Wis. 2d 486, 611 N.W.2d 727. We conclude Seeley forfeited his jury trial challenge by failing to raise his objection in the circuit court. Because Seeley has not preserved his argument for appeal, we affirm the orders.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

