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DISTRICT II

September 6, 2023

To:

Hon. Paul Bugenhagen Jr.
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Tristan Breedlove
Electronic Notice

Winn S. Collins
Electronic Notice

Donna F. Hastings
2971 North 38th St.
Milwaukee, WI 53210

You are hereby notified that the Court has entered the following opinion and order:

2022AP1133-CRNM State of Wisconsin v. Donna F. Hastings (L.C. #2019CF1166)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Donna F. Hastings appeals a judgment of conviction for discharging bodily fluid at a public safety worker contrary to WIS. STAT. § 941.375(2) (2019-20)¹, misdemeanor bail jumping, and resisting or obstructing an officer. Hastings's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Hastings has filed a response. Upon consideration of the no-merit report and Hastings's response, and following an independent review of the record as mandated by *Anders* and

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal. We therefore summarily affirm the judgment. *See* WIS. STAT. RULE 809.21(1).

At the outset of the court trial, defense counsel clarified that Hastings would not be presenting a defense as to the bail jumping or resisting charges but would be contesting the bodily fluids charge. The evidence at trial established that police were dispatched in response to a citizen call about a suspected painkiller overdose. Police arrived to find Hastings slurring her words, and they suspected she was under the influence of alcohol. A records check revealed she was out on bail at the time with absolute sobriety as a condition of her release.

Officers arrested Hastings on suspicion of bail jumping and brought her to a squad car, during which transport she went limp and became dead weight. When police seated her in the squad, she banged her head against the window, managed to remove the seat belt, and began kicking the window. Officers decided to lay her horizontally on the back seat. Deputy Antonio Dominguez testified that as he held down her shoulders, Hastings shouted obscenities and spit in his face. Dominguez testified Hastings's behavior prompted police to fit her with a spit mask and to request a vehicle with a restraint chair.

Hastings testified in her own defense. She generally corroborated the officers' testimony, except that she denied intentionally spitting on Dominguez. During closing arguments, the defense emphasized that no other officer testified to seeing Hastings spit on Dominguez. The defense also argued that any spitting that occurred was inadvertent and a result of Hastings having no teeth. The circuit court found the officers credible and found Hastings guilty on all counts.

Based upon the parties' joint recommendation, the circuit court imposed two years of probation. On the bodily fluids count, the court imposed and stayed a twelve-month jail sentence with Huber privileges. The court imposed and stayed concurrent three-month jail sentences on the misdemeanor counts.

The no-merit report addresses whether there is any nonfrivolous argument regarding: (1) the sufficiency of the evidence supporting the three charges; (2) Hastings's decisions to waive a jury trial and to testify in her own defense; and (3) the circuit court's exercise of its sentencing discretion. Our review of the appellate record satisfies us that the no-merit report sufficiently analyzes these issues and properly concludes that any challenge predicated upon them would lack arguable merit. Our independent review of the record reveals no other nonfrivolous issues.²

Hasting's response argues her prosecution was a "witch hunt." She argues Dominguez failed to preserve evidence and emphasizes that no other officer testified to seeing her spit on Dominguez. She asserts the circuit court was "wrong just to take his [Dominguez's] word and ruin my life with things supporting me over Deputy Dominguez." Hastings's arguments essentially ask this court to reweigh the testimony of witnesses and to reach a conclusion regarding credibility that is contrary to that reached by the trial judge. Under the circumstances of this case, such an argument is frivolous. See *Lessor v. Wangelin*, 221 Wis. 2d 659, 669, 586 N.W.2d 1 (Ct. App. 1998).

² We additionally note that Hastings entered special pleas of not guilty by reason of mental disease or defect (NGI). Those pleas were withdrawn and the matter was set for a court trial after two evaluators concluded there was a lack of evidence to substantiate such a defense.

Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Tristan Breedlove is relieved of further responsibility for representing Donna F. Hastings in connection with this appeal. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals