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DISTRICT III

December 28, 2023

To:

Hon. John Zakowski
Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
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Gordon Redell Young 507947
Prairie Du Chien Correctional Inst.
P.O. Box 9900
Prairie du Chien, WI 53821

Kirk D. Henley
Electronic Notice

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

2022AP1448-CRNM State of Wisconsin v. Gordon Redell Young
(L. C. No. 2020CF313)

Before Stark, P.J., Hruz and Gill, 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).

Gordon Young appeals from his convictions on two felonies and five misdemeanors arising out of an incident in which Young assaulted his girlfriend, Ann,¹ in her home, and a separate incident wherein police seized drug evidence incident to Young's arrest following a traffic stop. Attorney Kirk Henley has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32. The no-merit report sets forth the procedural history of

¹ This matter involves the victim of a crime. Pursuant to the policy underlying WIS. STAT. RULE 809.86(4) (2021-22), we use a pseudonym instead of the victim's name. All references to the Wisconsin Statutes are to the 2021-22 version, unless otherwise noted.

the case and addresses the sufficiency of the evidence to support the verdicts; whether Young's trial counsel provided ineffective assistance by failing to file a motion for a mistrial prior to sentencing; whether Young knowingly waived his right to appear personally at sentencing; and whether the circuit court properly exercised its discretion at sentencing. Young was advised of his right to respond to the no-merit report, but he has not filed a response. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude there are no arguably meritorious issues for appeal.

The State charged Young, as a repeat offender, with: (1) strangulation and suffocation; (2) battery; (3) disorderly conduct; (4) intimidation of a victim; (5) obstructing an officer; (6) possessing an illegally obtained prescription; (7) burglary; and (8) false imprisonment. At trial, Ann testified that Young showed up at her door uninvited, pushed his way past her into her duplex apartment, and refused to leave when she asked him to. While the two were arguing in the living room, Young placed his hands around Ann's neck and squeezed until she blacked out. When she came to, Ann went into her son's room and yelled out the window for the person who had driven Young to her apartment to come and remove him from her home. Young pulled Ann away from the window and pushed her down, where she landed on a drawer under her son's bed that was pulled out. When Ann attempted to leave her son's room, Young blocked her exit until Ann's brother pushed the door open allowing her to leave.

Ann then left the house and went to work, where her supervisor called the police on her behalf. As Ann was waiting for the police to arrive, Young sent Ann text messages apologizing and asking her not to call the police. The responding officer photographed the text messages, as well as the injuries to Ann's neck.

A second police officer testified that, about two weeks later, Young provided him with a false name during a traffic stop. After placing Young under arrest for obstruction, the officer conducted a pat-down search of Young's person and recovered a prescription medication bottle. The bottle contained ninety-seven gabapentin pills, but the label on the bottle was for an ibuprofen prescription under someone else's name. A laboratory analyst testified that gabapentin is available by prescription only.

The jury returned guilty verdicts on all of the charges except the burglary count. Following the trial, a juror contacted Young's trial counsel to discuss an incident that had occurred during deliberations. The juror stated that during the first two hours of deliberation, he and another juror still had doubt on the strangulation count, and the discussion became "somewhat heated with expletives and some harsh language being used." At one point, another juror "got up out of his chair, dropped some F-bombs at [the reporting juror] and approached him in an aggressive manner to the point where two other jurors had gotten up and kind of pushed them apart and sat back down." The reporting juror stated that he then felt intimidated into changing his vote to guilty. Trial counsel relayed the information to the circuit court and the State.

The circuit court subsequently held a sentencing hearing at which Young appeared by phone. Young informed the court that he wished to proceed remotely due to a prison policy that would require him to quarantine for two weeks if he left the prison.

Young made an oral motion for a mistrial at the beginning of the sentencing hearing based upon the alleged intimidation of the juror. The State suggested an evidentiary hearing to make an official record of what had occurred. The circuit court then disclosed that it had also

spoken to the reporting juror, who had relayed the same account to the court, but had not indicated that his verdict would have been different absent the alleged intimidation. The court questioned whether, assuming the juror would testify in the same manner at a hearing, the interaction would rise to the level warranting a mistrial—characterizing it as a “heat of the moment argument” without any “threat or an actual ... hands around the neck that sort of thing.” However, the court did offer to adjourn the sentencing and hold a hearing on the mistrial motion. Upon conferring with his trial counsel, Young informed the court that he would prefer to proceed to sentencing rather than delay the matter for an evidentiary hearing.

The parties proceeded to make their sentencing recommendations, and the circuit court discussed the gravity of the offense, the need to protect the public, and the character of the offender—emphasizing Young’s extensive criminal history. The court then sentenced Young to two years and six months of initial confinement followed by two years and six months of extended supervision on the strangulation count, with lesser concurrent sentences on all of the other counts. The court also awarded 147 days of sentence credit.

We agree with counsel’s description, analysis, and conclusion that any challenges to the sufficiency of the evidence, counsel’s performance, Young’s waiver of his right to be present for sentencing, or the sentences themselves would lack arguable merit. In particular, we note that Young could not prevail on a claim of ineffective assistance of counsel based upon withdrawing the mistrial motion when Young himself knowingly advised the circuit court that he wished to do so. Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Kirk D. Henley is relieved of further representation of Gordon Young in this matter. *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