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DISTRICT IV

June 13, 2024

To:

Hon. Patricia Baker
Circuit Court Judge
Electronic Notice

Lisa M. Roth
Clerk of Circuit Court
Portage County Courthouse
Electronic Notice

David J. Susens
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Gabriel J. Ross 536092
New Lisbon Correctional Institution
P.O. Box 2000
New Lisbon, WI 53950-2000

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

2023AP606-CRNM State of Wisconsin v. Gabriel J. Ross (L.C. # 2019CF319)

Before Blanchard, Graham, and Taylor, 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).

Attorney David Susens, as appointed counsel for Gabriel Ross, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Ross with a copy of the report, and both counsel and this court advised him of his right to file a response. Ross has not responded. We conclude that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21. After our independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

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

After a jury trial, Ross was convicted of aggravated battery and threats to injure. The court imposed concurrent sentences, with the controlling sentence being on the battery count for two years of initial confinement and two years of extended supervision.

The no-merit report addresses whether the evidence was sufficient. We affirm the verdicts unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Credibility of witnesses is for the trier of fact. *Id.* at 504.

Without attempting to recite the evidence in detail here, the testimony of the victim, together with other evidence such as photographs, was sufficient. This evidence was not inherently incredible and, if believed by the jury, was sufficient to satisfy the elements of aggravated battery and threats to injure, and to prove beyond a reasonable doubt that the privilege of self-defense did not apply. There is no arguable merit to this issue.

The no-merit report discusses several aspects of the trial, such as jury selection, defense objections to evidence, Ross's decision to testify, and disputed jury instructions. There is no arguable merit on these issues, for the reasons explained in the no-merit report.

The no-merit report addresses Ross's sentences. As explained in the no-merit report, the sentences are within the legal maximum. As to discretionary issues, the standards for the circuit court and this court are well-established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

Our review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Susens is relieved of any further representation of Ross 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