COURT OF APPEALS
DECISION
DATED AND RELEASED

September 21, 1995

Nos. 95-0782-CR-NM
95-0783-CR-NM

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MAI LEE VUE,

Defendant-Appellant.

APPEALS from judgments of the circuit court for La Crosse County: PETER G. PAPPAS, Judge. *Appeal No. 95-0782-CR-NM affirmed; Appeal No. 95-0783-CR-NM dismissed*.

SUNDBY, J. Mai Lee Vue was present at a house when police officers executed a search warrant. She consented to a search of her purse, and officers found a handgun in it. She was charged with carrying a concealed weapon, a misdemeanor. After Vue missed a court appearance, she was also charged with misdemeanor bail jumping. The cases were tried together to a jury. The jury found Vue not guilty of bail jumping, and a judgment of acquittal

was entered. The jury found Vue guilty of carrying a concealed weapon, and the court fined Vue $350.

Vue filed a notice of appeal in both matters.[1] However, since she was acquitted of bail jumping, she is not aggrieved and lacks standing to appeal. Therefore, that appeal is dismissed.

In Appeal No. 95-0782-CR-NM, Vue's appellate counsel, Attorney Margarita Van Nuland, has filed a no merit report pursuant to RULE 809.32, STATS., and ***Anders v. California,*** 386 U.S. 738 (1967). Vue was served with a copy of the report and advised of her right to file a response. Vue has not done so. This court has conducted the independent review of the record that is required by ***Anders,*** and concludes that there are no arguable appellate issues. Therefore, we affirm the judgment of conviction.

Vue is Hmong and speaks little, if any, English. At a pretrial conference, Vue's attorney informed the court that an interpreter for Vue would be needed. On the morning of trial, the assistant district attorney questioned whether a second interpreter was needed for witnesses, and informed the court that, in her experience, "it's standard practice to have a separate one so there is not going to be any issues created about people understanding things and to avoid any other problems." Vue's counsel, however, did not request a different interpreter for witnesses, and did not object when the court ruled that one interpreter would be used.

In the no merit report, appellate counsel concludes that any challenge to the lack of a second interpreter would be without merit. This court agrees. While the right of a non-English speaking defendant to an interpreter is well-settled, ***State v. Neave,*** 117 Wis.2d 359, 344 N.W.2d 181 (1984), there is no requirement that a separate interpreter be provided when witnesses also do not speak English. Since Vue did not request a separate interpreter, and the record does not suggest that a separate interpreter was needed, an appeal on this question would be frivolous.

[1] We consolidate these appeals.

The second part of the no merit report addresses the competency of the interpreter. In closing argument, the State asked the jury to watch Vue to determine whether she appeared to be understanding the proceedings. That line of argument was designed to counter Vue's theory of defense on the bail jumping charge, that she did not understand a scheduling order. Vue did not object during closing argument.

After the jury had been sworn and begun deliberations, Vue's counsel advised the court that the interpreter had been unable to translate the jury instructions to Vue. Counsel moved for a mistrial, or that the jury be informed that Vue was not completely understanding the proceedings. The trial court denied Vue's motion because Vue had never told the court that the interpreter was inadequate and counsel did not object during closing argument.

An appeal on this question would lack arguable merit. An objection to the competence of an interpreter "must be made as soon as any incapacity or deficiency becomes apparent." ***State v. Besso,*** 72 Wis.2d 335, 343, 240 N.W.2d 895, 899 (1976). Because Vue did not alert the trial court to any problem with the interpreter when the translation problems occurred, this issue is waived.

Additionally, appellate counsel indicates that Vue's son, who speaks and understands English, was present during the trial and told Vue's attorney after trial that the interpreter had not correctly translated parts of the trial. Appellate counsel notes that she intended to file a postconviction motion on that basis. However, Vue has failed to respond to appellate counsel's inquiries, and counsel feels she cannot pursue such a motion without the cooperation of her client and the client's family. Vue has failed to respond to her attorney, and she did not respond to the no merit report. If she wanted to pursue the matter, she, or some member of her family, could have filed a response with this court. Vue's silence is further evidence of waiver.

Based on an independent review of the record, this court finds no basis for reversing the judgment of conviction in No. 95-0782-CR-NM. Any further appellate proceedings would be without arguable merit within the meaning of ***Anders*** and RULE 809.32, STATS. Accordingly, the judgment of

conviction in Appeal No. 95-0782-CR-NM is affirmed. For reasons stated above, Appeal No. 95-0783-CR-NM is dismissed. Attorney Van Nuland is relieved of any further representation of the defendant on this appeal.

By the Court.—Judgment affirmed in Appeal No. 95-0782-CR-NM; Appeal No. 95-0783-CR-NM dismissed.