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DISTRICT III

July 30, 2013

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

2012AP1573-CRNM State of Wisconsin v. Ellis L. Williams (L. C. #2011CF100)

Before Hoover, P.J., Mangerson and Stark, JJ.

Counsel for Ellis Williams has filed a no-merit report concluding there is no basis to challenge Williams' convictions for burglary – commit battery on a person – domestic abuse; strangulation and suffocation – domestic abuse; substantial battery – domestic abuse; first-degree reckless endangerment – domestic abuse; and stalking – previous conviction. All of the convictions had repeater enhancements. Williams responded. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised and summarily affirm.

The charges arose from allegations Williams broke down the front door of the victim's residence and severely beat her in her young daughter's presence. Williams exercised his right to a jury trial on the first four counts, and the fifth count was tried to the court.[1] The jury found Williams guilty on counts one through four, and the circuit court found him guilty on count five. The court imposed a sentence on count one of ten years' initial confinement and five years' extended supervision; on counts two and three, two years' initial confinement and three years' extended supervision, concurrent to count one, and consecutive to any sentence Williams was serving; on count four, five years' initial confinement and five years' extended supervision, consecutive to counts one through three, and any sentence Williams was serving; and on count five, three years' initial confinement and one year extended supervision, concurrent with count four and consecutive to counts one through three.

There is no arguable issue concerning the sufficiency of the evidence. We review the evidence and all related inferences in the light most favorable to the verdict. ***State v. Pankow***, 144 Wis. 2d 23, 30, 422 N.W.2d 913 (Ct. App. 1988). A verdict will not be reversed unless the evidence is so lacking in probative value that, as a matter of law, no reasonable fact finder could have found guilt beyond a reasonable doubt. ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990).

Here, the evidence of Williams' guilt was overwhelming. Evidence from the victim, the daughter, several police officers and medical providers established the following: Williams

[1] An amended Information dropped a charge of armed burglary - domestic abuse - repeater.

knocked on the victim's door at approximately four in the morning. She told him he was intoxicated and not welcome to stay there. Williams then left.

Williams subsequently called the victim, and told her he was going to come over and hurt her and the family. Williams then returned to the residence and kicked in the front door. In the daughter's presence, Williams caught the victim in the kitchen, struck her multiple times, threw her down the basement stairs and told her that he was going to "finish her off." He then beat, kicked and choked her nearly to the point of unconsciousness. When police arrived, a man later identified as Williams approached them and said, "Take me." He put his hands behind his back and was placed in handcuffs. Police noticed a dark red substance that appeared to be blood on Williams' hands, jeans and boots and swelling on his knuckles. Photographic evidence at trial also depicted blood throughout the residence. The evidence of Williams' guilt was more than sufficient.[2]

The record also discloses no basis for challenging the circuit court's sentencing discretion. The sentence was well below the maximum allowable by law and therefore presumptively neither harsh nor excessive. *See* ***State v. Grindemann***, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507. The court considered the proper factors, including Williams' character, the seriousness of the offenses and the need to protect the public. The court noted Williams' repeated exposures to correctional facilities, "and it hasn't made any difference at all." The court characterized Williams' rage as "volcanic" and "horrific."

[2] There is no basis to challenge the circuit court's finding that appropriate documentation established the repeater allegations.

The response to the no-merit report addresses a transcript of an inculpatory phone call Williams made to the victim from the Brown County jail approximately one week following the incident. Williams argues "my lawyer didn't file any motion to object to the phone call being used at my trial." There is no arguable merit to any issue regarding a reasonable expectation of privacy in the phone call. Williams was specifically advised the call was being recorded and subject to monitoring at any time.

The response to the no-merit report also addresses Williams' waiver of his right to a jury trial on count five. Williams alleges, "I didn't understand what would be the best thing for me, and my lawyer didn't help me understand so I just did what the Judge wanted me to do." The record belies Williams' assertion. Following a colloquy, Williams advised the court he wished to waive his right to a jury trial on count five. Williams specifically advised the court he did not "need any more time to think about that." There is no basis to challenge the court's finding that Williams waived his right to a jury trial on count five.

Our independent review of the record discloses no other issues of arguable merit.

Therefore,

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21 (2011-12).

IT IS FURTHER ORDERED that attorney Timothy O'Connell is relieved of further representing Williams in this matter.

Diane M. Fremgen
Clerk of Court of Appeals