



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I/II

October 9, 2013

To:

Hon. Jeffrey A. Conen
Circuit Court Judge
Safety Building
821 W. State Street
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State Street
Milwaukee, WI 53233

Urszula Tempska
The Shellow Group
324 W. Vine Street
Milwaukee, WI 53212

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Anthony C. Huck 403870
Kettle Moraine Corr. Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2012AP2780-CRNM State of Wisconsin v. Anthony C. Huck (L.C. # 2009CF5888)

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

Anthony Huck appeals from a judgment convicting him of three felonies: one count of theft contrary to WIS. STAT. § 943.20(1)(a) (2009-10), and two counts of burglary contrary to WIS. STAT. § 943.10(1m)(a) (2009-10), all as party to the crime. Huck's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Huck received a copy of the report and was advised of his right to file a

¹ All subsequent references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether the circuit court properly admitted at trial a witness's videotaped in-court deposition, (2) whether multiple amendments of the information were appropriate, (3) whether Huck received effective assistance from his trial counsel, (4) whether the evidence was sufficient to convict Huck; (5) whether the circuit court misused its sentencing discretion, and (6) whether there were any nonharmless legal errors. We agree with appellate counsel that these issues do not have arguable merit.

We agree with appellate counsel that the circuit court properly admitted a witness's videotaped in-court deposition because the witness could not be located on the adjourned trial date. The in-court deposition was taken on the previously adjourned trial date. The witness could not be located on the rescheduled trial date. The circuit court's evidentiary ruling complied with WIS. STAT. § 967.04(5)(a).

The information was properly amended pretrial to add two transactionally related charges of burglary as reflected in the evidence adduced at the preliminary examination. WIS. STAT. § 971.29(1); *State v. Williams*, 198 Wis. 2d 479, 488-89, 544 N.W.2d 400 (1996). The information was properly amended at trial to reflect evidence about the dates of the offenses. Sec. 971.29(2); *Whitaker v. State*, 83 Wis. 2d 368, 373-74, 265 N.W.2d 575 (1978).

The no-merit report considers sufficiency of the evidence for each count. Our standard of review is whether the evidence, viewed in the light most favorable to the State, is so insufficient

in probative value and force that as a matter of law no reasonable jury could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). The standard is the same whether the evidence is direct or circumstantial. *Id.* The record reveals that for each count, at least one witness gave testimony to support each requisite element. It was for the jury to weigh the evidence, resolve conflicts in the testimony, and draw inferences from the evidence. *Id.* at 506. Upon the evidence adduced at trial, we cannot say that the jury erred in finding guilt beyond a reasonable doubt. We conclude that no arguable merit could arise from a challenge to the sufficiency of the evidence.

We normally decline to address claims of ineffective assistance of trial counsel if the issue was not raised by a postconviction motion in the circuit court. *State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979). However, because appointed counsel asks to be discharged from the duty of representation, we must determine whether an ineffective assistance of counsel claim would have sufficient merit to require appointed counsel to file a postconviction motion and request a *Machner* hearing. *State v. Allen*, 2010 WI 89, ¶88, 328 Wis. 2d 1, 786 N.W.2d 124 (broad scope of no-merit review suggests that we “should identify issues of arguable merit even if those issues were not preserved in the circuit court, especially where the ineffective assistance of postconviction counsel was the reason those issues were not preserved for appeal”). Our review of the record does not suggest any ineffective assistance of counsel claim.

With regard to the sentences, the record reveals that the sentencing court’s discretionary decision had a “rational and explainable basis.” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. The court adequately discussed the facts and factors relevant to sentencing Huck to a thirteen-year term for theft and concurrent twelve-year terms for each

burglary. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. In fashioning the sentences, the court considered the seriousness of the offenses, Huck's character, failure to take responsibility for his conduct, history of prior offenses and previous failures on supervision, the harm to the victim, and the need to protect the public. The sentences comply with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. Before sentencing Huck as a repeat offender, the circuit court secured Huck's admission to his prior conviction, thereby satisfying the requirements of WIS. STAT. § 973.12(1). We agree with appellate counsel that there would be no arguable merit to a challenge to the sentences.

In addition to the issues discussed above, we have independently reviewed the record. We have reviewed, *inter alia*, the pretrial proceedings, voir dire, evidentiary rulings during trial, and the jury instructions. We have not located any arguably meritorious issue for appeal.

Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgment of conviction and relieve Attorney Urszula Tempska of further representation of Huck in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Urszula Tempska is relieved of further representation of Anthony Huck in this matter.

*Diane M. Fremgen
Clerk of Court of Appeals*