



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
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

January 8, 2014

To:

Hon. Scott C. Woldt
Circuit Court Judge
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903-2808

Melissa M. Konrad
Clerk of Circuit Court
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903-2808

Christian A. Gossett
District Attorney
P. O. Box 2808
Oshkosh, WI 54903-2808

Eileen A. Hirsch
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

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

Donald L. Martin 525127
Waupun Corr. Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2013AP1849-CRNM State of Wisconsin v. Donald L. Martin (L.C. #2010CF447)

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

Donald L. Martin appeals from a judgment convicting him of first-degree intentional homicide, as a repeater and as a party to a crime, and armed robbery, as a repeater. Martin'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). Martin received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

On April 8, 2010, the State filed a criminal complaint charging Martin with first-degree intentional homicide and armed robbery. The charges stemmed from Martin's actions on April 5, 2010, in the city of Oshkosh, Wisconsin, in which he bludgeoned, stabbed, strangled, and eventually killed Emily Wayman so that he could obtain Oxycontin pills from her. The case was tried to a jury, and Martin was found guilty on both counts. The circuit court sentenced Martin to life in prison without the possibility of parole for the homicide and ten years of initial confinement and ten years of extended supervision, concurrent, on the armed robbery.

The no-merit report addresses the following appellate issues: (1) whether the evidence at Martin's jury trial was sufficient to support his convictions, (2) whether the circuit court properly exercised its discretion at sentencing, (3) whether any of the evidence introduced against Martin was inadmissible under the Fourth or Fifth Amendments, (4) whether there were other erroneous evidentiary rulings that prejudiced Martin, and (5) whether there were other errors in procedure that would entitle Martin to a new trial.

With respect to the sufficiency of the evidence, we may not substitute our judgment for that of the jury unless the evidence, viewed most favorable to the State and the convictions, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Our review of the trial transcripts persuades us that the State produced ample evidence to convict Martin of his crimes. Accordingly, we agree with counsel that any challenge to the sufficiency of the evidence would lack arguable merit.

With respect to the sentence imposed, the record reveals that the circuit court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. In imposing its aggregate sentence of life in prison, the court considered the seriousness of the offenses, Martin's character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Martin's prior criminal record and the brutal nature of the crimes, the sentence does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Martin's sentence would lack arguable merit.

With respect to the evidence introduced against Martin, there is no basis to believe that any was inadmissible under the Fourth or Fifth Amendments. The only evidence obtained from search warrants was evidence found on property belonging to the family of Martin's girlfriend. Martin lacked standing to challenge those searches. As for the incriminating statements Martin gave to police, it was conceded that Martin had received his *Miranda*² warnings before making them. Moreover, Martin did not unequivocally invoke his right to counsel during questioning. Thus, the circuit court properly denied Martin's motion to suppress those statements.³ We agree with counsel that any challenge to the evidence based on the Fourth or Fifth Amendments would lack arguable merit.

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

³ The circuit court also concluded that, under the totality of the circumstances, the statements were voluntary. The record supports the court's determination.

With respect to evidentiary rulings, Martin made two objections of note. First, he objected to the testimony of one State witness (Matthew Steffes) regarding an alleged attempt by Martin to keep another witness (Travis Hoover) from testifying. Second, he objected to the use of pictures of Wayman's body as unduly prejudicial. We cannot say that the circuit court erroneously exercised its discretion in overruling these objections. Accordingly, we agree with counsel that any challenge to these evidentiary rulings would lack arguable merit.

Finally, there were no other errors in procedure that would entitle Martin to a new trial. The no-merit report considered the issues of jury selection, confirmation that Martin's election to testify was knowingly made, use of proper jury instructions, and propriety of opening and closing arguments. The report also considered the circuit court's denial of Martin's request for new counsel on the eve of trial, which is a discretionary decision. *See State v. McDowell*, 2004 WI 70, ¶66, 272 Wis. 2d 488, 681 N.W.2d 500. We are satisfied that the no-merit properly addresses these issues as without merit, and we will not discuss them further

Our independent review of the record does not disclose any potentially 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 and relieve Attorney Eileen A. Hirsch of further representation 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 Eileen A. Hirsch is relieved of further representation of Martin in this matter.

Diane M. Fremgen
Clerk of Court of Appeals