



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

March 12, 2014

To:

Hon. Gerald P. Ptacek
Circuit Court Judge
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

Rose Lee
Clerk of Circuit Court
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

W. Richard Chiapete
Assistant District Attorney
730 Wisconsin Avenue
Racine, WI 53403

Aileen G. Henry
Henry Law Offices
1025 56th Street
Kenosha, WI 53140

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

Charles Hicks 57849
Wisconsin Secure Program Facility
P.O. Box 9900
Boscobel, WI 53805-9900

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

2013AP1951-CRNM State of Wisconsin v. Charles Hicks (L.C. # 2009CF101)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

Charles Hicks appeals from a judgment convicting him of possession with intent to deliver cocaine and maintaining a drug trafficking place, both as a party to a crime and as a habitual offender. Hicks' 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). Hicks received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing

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

the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment and remand with directions.² See WIS. STAT. RULE 809.21.

The charges against Hicks arose from search warrants executed at a house and nearby vehicle in Racine, Wisconsin. Police found Hicks inside a bedroom of the house near a plastic baggy of cocaine. They also found fifty plastic baggies of cocaine in the vehicle, which Hicks had been seen operating, along with other drug paraphernalia (e.g., glass tube, scale, and empty baggies).³

The no-merit report addresses the following appellate issues: (1) whether the evidence at Hicks' jury trial was sufficient to support his convictions and (2) whether the circuit court properly exercised its discretion at sentencing.

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

² There is a clerical error in the judgment of conviction regarding count one. Although Hicks was charged with the Class E Felony of possession with intent to deliver cocaine (between five and fifteen grams), he was ultimately convicted of the Class F Felony of possession with intent to deliver cocaine (between one and five grams). We remand the matter to the circuit court so that the judgment can be amended.

³ Hicks did not assert an ownership or possessory interest in either the house or vehicle that was searched, and there is no indication that he had any. The house was in foreclosure, and the car was registered to another person. Accordingly, even if there were some defect in the search warrants, Hicks would lack standing to make a Fourth Amendment challenge to the searches.

to convict Hicks 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 an aggregate sentence of eight years of imprisonment, the court considered the seriousness of the offenses, Hicks' 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 Hicks' prior record, 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 Hicks' sentence would lack arguable merit.

In addition to the issues raised in the no-merit report, we considered other potential issues that arise in cases tried to a jury, e.g., jury selection, objections during trial, confirmation that the defendant's election to testify is knowingly made, use of proper jury instructions, etc. Here, there was no error in the jury selection process, nor was there any indication that any juror who ultimately served could not be fair and impartial. Objections during Hicks' trial were relatively few in number and properly ruled on. When Hicks elected to testify at trial, the circuit court conducted a proper colloquy with him about his right not to testify. The jury instructions accurately conveyed the applicable law and burden of proof. Accordingly, we conclude that such issues would lack arguable merit.

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 Aileen G. Henry 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 and remanded with directions.

IT IS FURTHER ORDERED that Attorney Aileen G. Henry is relieved of further representation of Hicks in this matter.

Diane M. Fremgen
Clerk of Court of Appeals