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DISTRICT I

November 17, 2014

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

2013AP595-CRNM State of Wisconsin v. Eric Lionel Turner (L.C. #2011CM385)

Before Curley, P.J.¹

Eric Lionel Turner appeals a judgment, convicting him on one count of intentionally pointing a firearm at a person, one count of disorderly conduct, and one count of misdemeanor bail jumping following a court trial. He also appeals an order denying his postconviction motion, which alleged ineffective assistance of trial counsel. Appellate counsel, Attorney Steven P. Cotter, has filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

(1967), and WIS. STAT. RULE 809.32. Turner was advised of his right to file a response and has responded. Counsel has also filed a supplemental no-merit report, pursuant to this court's order.² We reject the no-merit report.

Turner was employed as a private security guard by a landlord. On January 5, 2011, he allegedly went to the victim's apartment, pointing a gun at her and ransacking the apartment as he searched it. At the court trial, three witnesses testified: the victim and two maintenance workers employed by the landlord. The trial court concluded the victim's testimony was the most credible, concluding she had no motive to lie, while implying that the maintenance workers had a financial motive in their continued employment with the landlord. The victim, however, had sued the landlord on January 25, 2011, essentially alleging that he had sent Turner to her apartment to dissuade her from pursuing compensation for injuries sustained on the premises. Thus, the no-merit report addresses a single issue: whether there is any arguable merit to a claim of ineffective assistance of trial counsel because trial counsel failed to inform the trial court of a pending civil suit by the victim against the landlord.

However, the no-merit report fails to address whether there is any arguable merit to a claim of insufficiency of the evidence to support Turner's convictions.³ Counsel notes that the

² We had previously ordered the record supplemented with a stipulation purportedly entered between Turner and the State regarding the bail jumping charge. The circuit court clerk reported that it did not have the stipulation, so we directed counsel to attempt to locate it. The original could not be found, but counsel obtained an unsigned copy from the district attorney, and trial counsel confirmed the copy as accurate. By order dated May 8, 2014, we directed appellate counsel to submit this copy of the stipulation as part of a supplemental no-merit report. *See* WIS. STAT. RULE 809.32(2)(f).

³ The trial court had adjourned a plea hearing, after Turner disputed the State's version of events, because without Turner's agreement there was no factual basis on which to accept no-contest pleas to disorderly conduct or bail jumping.

victim's testimony supported only the intentional pointing and disorderly conduct charges. The bail jumping charge was purportedly addressed by a stipulation, which went to two of the three elements of bail jumping: that Turner had been charged with a misdemeanor and that he was released from custody on bond at the time, with certain conditions. But the stipulation was not read into the record, Turner expressly told the trial court that he had not read the stipulation, and the only copy of the stipulation that appears to be available is an unsigned file copy that is not formally part of the record.

Further, the third element of bail jumping requires that the defendant *intentionally* failed to comply with the terms of his bond. The trial court, making its factual findings, found that Turner "did fail to comply with the terms of his bond by possessing this firearm" and by committing a new crime. Although the circuit court later added the word "intentionally" to its summary, there is no express factual finding with respect to, and the stipulation does not address, the intent element. Indeed, in the no-merit response, Turner appears to be claiming that he believed himself in compliance with the terms of the bond he is accused of violating. We therefore question whether the bail jumping conviction is sustainable on this record.

The no-merit report additionally fails to address whether there is any arguable merit to a challenge to the trial court's sentencing discretion, and it fails to address any of Turner's issues as raised in the no-merit response. While not every no-merit response or every issue raised therein warrants a supplemental report, Turner appears to be alleging among other things that his waiver of a jury trial and his waiver of his right to testify were unknowing, possibly because of ineffective assistance of trial counsel by failure to explain certain things to Turner.

Accordingly, we conclude the no-merit report is not sufficient for this court to review the possible merits of an appeal, so we must reject it. Within thirty days of the date of this order, counsel must either: (1) file a new no-merit report that adequately explains whether there is no arguable merit to any issues that could be raised on appeal; (2) file a brief on the merits of an appeal; or (3) seek leave of this court to dismiss the matter and return to the trial court to pursue a supplemental postconviction motion. If counsel believes some other option to be appropriate, he may so move the court. Counsel is additionally not precluded from discussing or pursuing issues beyond those mentioned herein, if necessary.

Upon the foregoing,

IT IS ORDERED that the no-merit report in appeal No. 2013AP595-CRNM is rejected.

IT IS FURTHER ORDERED that within thirty days of the date of this order, counsel shall: (1) file a new no-merit report that adequately explains whether there is no arguable merit to any issues that could be raised on appeal; (2) file a brief on the merits of an appeal; or (3) seek leave of this court to dismiss the matter and return to the trial court to pursue a supplemental postconviction motion.

Diane M. Fremgen
Clerk of Court of Appeals