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July 10, 2015

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

2014AP1593-CRNM State of Wisconsin v. William J. Reese
(L.C. # 2009CF001137)

Before Curley, P.J., Kessler and Brennan, JJ.

William J. Reese appeals from a judgment convicting him, after a bench trial, of second-degree recklessly endangering safety with use of a dangerous weapon and of false imprisonment. *See* WIS. STAT. §§ 941.30(2), 939.63(1)(b), 940.30 (2009-10).¹ Appellate counsel, Basil M. Loeb, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Reese filed two responses. After independently reviewing the record,

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

the no-merit report, and Reese's responses, this court concludes there are no arguably meritorious issues and, therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

BACKGROUND

According to the complaint, Reese was a resident at a group home where the victim, D.B.R., was an employee. D.B.R. said that on February 28, 2009, Reese called her upstairs but that she did not respond. A couple of minutes later, Reese came down the stairs naked. D.B.R. said that he pushed her to the floor, sat on top of her, and tried to remove her pants. Two other residents of the group home heard D.B.R. screaming and pulled Reese off of her.

D.B.R. ran into her office, and Reese followed her. She then ran to the backyard. When she returned to the house, Reese knocked her to the floor again, trying to remove her pants. Two of the residents pulled Reese off of her for a second time. D.B.R. then went to her office. She told police that she was there for approximately two minutes when Reese came into the office, now wearing pants. D.B.R. said that he pushed his way in with a knife in his hand. D.B.R. told him to drop the knife, which he did. According to D.B.R., Reese then calmed down, and the police arrived. Reese was charged with attempted second-degree sexual assault (use of force or violence).

The issue of Reese's competency was raised at the time of his initial appearance. The circuit court suspended proceedings and ordered that Reese be examined. The circuit court, without objection from the parties, accepted the examiner's recommendation that Reese be transported to a state facility for further in-patient evaluation. Eight months later, Reese was found competent and the proceedings were reinstated.

Reese entered a plea of not guilty by reason of mental disease or defect. The circuit court suspended the proceedings and ordered that he be examined, pursuant to WIS. STAT. § 971.16. The evaluating psychologist concluded she was unable to support Reese's plea, and he later withdrew it.

An amended information subsequently was filed charging Reese with second-degree recklessly endangering safety with use of a dangerous weapon and false imprisonment. After Reese waived a jury, the case proceeded to a bench trial where he was found guilty of both charges.

The State recommended that the court impose a global sentence comprised of eight years of initial confinement and eight years of extended supervision. Reese's trial counsel asked that the court impose a probationary sentence. The circuit court followed the defense recommendation and placed Reese on concurrent periods of probation.

Postconviction/appellate counsel was appointed and filed a no-merit report on Reese's behalf. In May 2013, we rejected that report, dismissed the appeal without prejudice, and extended the deadline for Reese to file a postconviction motion or notice of appeal. Prior to doing so, we had remanded the matter to the circuit court to determine whether Reese was competent when he was counseled about the decision to appeal and about the option for a no-merit report.

On remand, Reese was examined by a court-appointed psychiatrist, who diagnosed Reese with schizoaffective disorder. The psychiatrist further concluded to a reasonable degree of medical certainty that Reese was not competent to proceed when the appeal in this matter was filed, was not competent to proceed at the time he was examined, and was not likely to regain

competency in the future. The State did not challenge these conclusions. The circuit court made findings and entered an order that: (1) “Reese was not competent at the time when he decided to appeal, [and] was counseled in regard to his appeal and appellate options. (2) That [] Reese is not currently competent to assist counsel or to make decisions committed by law to him with a degree of rational understanding.” The circuit court also appointed an attorney to act as temporary guardian for Reese, “to instruct defense counsel whether to initiate postconviction relief and, if so, what objectives to seek.” *See State v. Debra A.E.*, 188 Wis. 2d 111, 135, 523 N.W.2d 727 (1994).

Consequently, we dismissed the pending no-merit proceeding because we concluded that it was launched and the no-merit option was invoked at a time when Reese could not make those decisions.

Attorney Loeb was subsequently appointed to represent Reese and filed the instant no-merit report in November of 2014. In the report, counsel explains that he has met with Reese on more than ten occasions and had telephone conversations with Reese on more than fifty occasions. Counsel further states that he met with Reese’s temporary guardian, who agrees that the filing of this no-merit report is appropriate.

The no-merit report addresses the following issues: (1) the sufficiency of the evidence; (2) whether there is a basis to challenge the circuit court’s exercise of sentencing discretion or

seek sentence modification; and (3) whether trial counsel was ineffective. We will discuss each one in turn.²

Before doing so, however, we briefly note that the record reveals the circuit court and the parties went to great lengths to ensure that Reese was competent to stand trial. See *State v. Byrge*, 2000 WI 101, ¶31, 237 Wis. 2d 197, 614 N.W.2d 477 (“Requiring that a criminal defendant be competent has a modest aim: It seeks to ensure that he has the capacity to understand the proceedings and to assist counsel.”) (citation omitted). There would be no arguable merit to an appeal on this basis.

DISCUSSION

A. *Sufficiency of the Evidence*

Counsel first addresses whether the evidence is sufficient to support the verdict. We view the evidence in the light most favorable to the verdict and, if more than one reasonable inference can be drawn from the evidence, we must accept the inference necessarily drawn by the trier of fact. See *State v. Poellinger*, 153 Wis. 2d 493, 504, 451 N.W.2d 752 (1990). The verdict will be reversed “only if, viewing the evidence most favorably to the [S]tate and the conviction, it is inherently or patently incredible, or so lacking in probative value that no [trier of fact] could have found guilt beyond a reasonable doubt.” *State v. Alles*, 106 Wis. 2d 368, 376-77, 316 N.W.2d 378 (1982) (citation omitted); see *Krueger v. State*, 84 Wis. 2d 272, 282, 267 N.W.2d 602 (1978) (The test is the same “whether the trier of the facts is a court or a jury.”) (citation omitted).

² While we have considered the various claims made by Reese in his responses, we conclude that they do not warrant further discussion here.

D.B.R. testified and explained that she was a care worker in a group home for mentally challenged individuals. She testified consistent with the allegations set forth in the complaint.

The State also called as a witness Felix Riccobono, one of the residents of the group home who was present during the incident. Riccobono testified that he heard D.B.R. call for help and ran into the room where she was located. He found her on the floor, on her stomach, with Reese on top of her. Reese was naked. Riccobono, who had grabbed a cardboard drum, then began striking Reese with it. He testified that D.B.R. told him to call 911, which he did.

Lastly, the State called Detective Steve Wells to testify. He described the police investigation into D.B.R.'s allegations, which included an observation of the knife Reese allegedly held during the incident, and confirmed that D.B.R. had identified the knife.

Reese did not testify and no witnesses were called on his behalf.

The circuit court acknowledged Riccobono's limitations with respect to his ability to articulate and remember what he observed but otherwise found that the State's witnesses were credible as to the events that had transpired. The court primarily relied on D.B.R.'s testimony. The evidence presented at trial supports the elements of second-degree recklessly endangering safety with use of a dangerous weapon and of false imprisonment. *See* WIS JI—CRIMINAL 1347, 990, & 1275. There would be no arguable merit to challenging the sufficiency of the evidence on appeal.

B. Sentencing

We also conclude that there would be no arguable basis to assert that the circuit court erroneously exercised its sentencing discretion, *see State v. Gallion*, 2004 WI 42, ¶17, 270

Wis. 2d 535, 678 N.W.2d 197, or that the sentence was excessive, see *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

The circuit court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and it must determine which objective or objectives are of greatest importance, *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the circuit court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public, and it may consider several subfactors. *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the circuit court's discretion. See *Gallion*, 270 Wis. 2d 535, ¶41.

In this case, the circuit court applied the standard sentencing factors and explained their application in accordance with the framework set forth in *Gallion* and its progeny. The circuit court reflected on the serious nature of the underlying facts and on Reese's character, noting concerns about Reese's minimization of his behaviors and his unwillingness to accept uncontroverted facts as to his conduct. The circuit court also accounted for Reese's mental health issues. However, the court stressed that Reese had actively compromised his own faculties when he drank alcohol on the day of the incident, which had mixed with his medication and created a dangerous situation.

On the charge of second-degree recklessly endangering safety, the circuit court withheld sentence and ordered Reese to serve five years of probation. On the charge of false imprisonment, the circuit court withheld sentence and ordered Reese to serve three years of

probation. The probationary terms were concurrent to each other. We agree with counsel's conclusions that the circuit court did not erroneously exercise its sentencing discretion and that there is no basis to modify Reese's sentence.

C. Ineffective Assistance of Counsel

Counsel further states in his no-merit report that the record does not support a finding that Reese's trial counsel provided deficient performance. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984) (to prevail on an ineffective assistance of counsel claim, a defendant must show that counsel's action or inaction constituted deficient performance and that the deficiency caused him prejudice). We agree.

Trial counsel's strategy of opting for a bench trial and attacking the credibility of the State's witnesses was reasonable. Moreover, we agree with appellate counsel that "[a]t the sentencing stage, there is not much more that could have been asked of trial counsel. Reese's attorney successfully persuaded [the circuit court] to reject the State's prison recommendation and place Reese on probation and not order any jail time."

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

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Basil M. Loeb is relieved of further representation of Reese in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

