



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 IV

December 16, 2015

To:

Hon. Craig R. Day
Circuit Court Judge, Br. 2
Grant County Courthouse
130 W Maple St
Lancaster, WI 53813

Tina McDonald
Clerk of Circuit Court
Grant County Courthouse
130 W. Maple St.
Lancaster, WI 53813

Clayton Griessmeyer
Law Office of Clayton Griessmeyer
P.O. Box 930473
Verona, WI 53593-0473

Anthony J. Pozorski
Asst. District Attorney
130 West Maple Street
Lancaster, WI 53813

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

James Alfred Knowler Sr.
1002 Dano Circle, Apt. 3
Marshall, MN 56258-4601

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

2015AP416-CRNM State of Wisconsin v. James Alfred Knowler, Sr.
(L.C. # 2013CF40A)

Before Kloppenburg, P.J., Lundsten and Higginbotham, JJ.

Attorney Clayton Griessmeyer, appointed counsel for James Alfred Knowler, Sr., has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to further proceedings based on: (1) the restitution ordered by the circuit court; (2) the court's ruling denying the defense motion for a directed

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

verdict; or (3) the sufficiency of the evidence to prove the value of the stolen property. Knowler was provided a copy of the no-merit report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we conclude that further appellate proceedings would not be wholly frivolous within the meaning of *Anders* and RULE 809.32. Accordingly, we reject the no-merit report.

Knowler was charged with two counts of burglary, one count of misdemeanor theft, and one count of felony theft. A jury found Knowler guilty of the theft charges, but not guilty of the burglary charges. The circuit court withheld sentence and ordered Knowler to serve three years of probation, with ninety days of conditional jail time. The circuit court also ordered Knowler to pay restitution in the amount of \$8,650.

The no-merit report asserts that there would be no arguable merit to a challenge to the court's exercise of discretion in determining the amount of the restitution award. *See State v. Longmire*, 2004 WI App 90, ¶16, 272 Wis. 2d 759, 681 N.W.2d 534 (determination of amount of restitution is left to circuit court's discretion). Our review of the sentencing hearing indicates that the circuit court ordered \$8,650 of restitution, broken down into \$1,000 to the theft victims for the deductible to their insurance company and the damage to the items that were returned to them; \$950 to the purchaser of the stolen items; and \$6,700 to the insurance company for the amount the company compensated the theft victims for the stolen property. The court explained that it determined that \$6,700 was the appropriate restitution as to the insurance company because the insurance company had paid \$7,375 to the victims. There appears to be a non-frivolous argument that the circuit court's calculation is incorrect.

The court purported to deduct the following amounts from \$7,375 as not appropriate for restitution on the theft convictions: \$300 for damage to a garage; \$750 for damage to a car; \$125 for gas and other items apparently related to costs to the victims in retrieving the stolen property; and \$500 that the court had ordered as restitution directly to the victims for damage to property that was returned.² However, when these amounts are deducted from \$7,375, the result is \$5,700, not \$6,700.

Because the record indicates that the circuit court erred in calculating the restitution amount, we conclude that there is at least one issue to pursue in further proceedings that is not wholly frivolous. We therefore reject the no-merit report.³

Therefore,

IT IS ORDERED that the no-merit report is rejected and this no-merit appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that the time to file a postconviction motion or notice of appeal is extended to sixty days from the date of this order.

Diane M. Fremgen
Clerk of Court of Appeals

² The court indicated that it took those figures from the victim impact statement, which is not in the record.

³ We note also that no-merit counsel concludes that there would be no arguable merit to two potential trial issues because they were not preserved for review by a contemporaneous objection by defense counsel. We remind no-merit counsel that unpreserved claims of error may still be reviewed in postconviction proceedings under the rubric of ineffective assistance of counsel.