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

2015AP313-CRNM State of Wisconsin v. Keith M. London (L.C. #2010CF3954)

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

Keith M. London appeals a judgment convicting him of seventeen counts of Medical Assistance fraud. Attorney Kathleen A. Lindgren 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 (1967). London was advised of his right to respond, but he did not file a response. After

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

considering the no-merit report and conducting an independent review of the record, we conclude that there are no arguably meritorious issues that could be raised on appeal.

The no-merit report first addresses whether there would be arguable merit to a claim that the circuit court improperly denied London's multiple motions to represent himself. London repeatedly requested permission to proceed *pro se,* including at hearings held on December 2, 2010; January 4, 2011; February 18, 2011; April 11, 2011; May 9, 2011; June 23, 2011; October 2, 2011; and November 9, 2011.

"A criminal defendant may waive his or her right to counsel in criminal trial court proceedings, provided the record reflects that the waiver is knowingly, intelligently and voluntarily made, and that the defendant is competent to proceed pro se." ***State v. Thornton***, 2002 WI App 294, ¶14, 259 Wis. 2d 157, 656 N.W.2d 45. "[I]n order for an accused's waiver of his right to counsel to be valid, the record must reflect not only his deliberate choice to proceed without counsel, but also his awareness of the difficulties and disadvantages of self-representation, the seriousness of the charge or charges he is facing and the general range of possible penalties that may be imposed if he is found guilty." ***Pickens v. State***, 96 Wis. 2d 549, 563, 292 N.W.2d 601 (1980), *overruled on other grounds by* ***State v. Klessig***, 211 Wis. 2d 194, 564 N.W.2d 716 (1997). In addition, a defendant must have "'the capacity to stand trial without benefit of counsel.'" ***Pickens***, 96 Wis. 2d at 567-68 (citation omitted). Although a defendant need not possess technical legal knowledge, he or she must be capable of effective communication and have basic literacy skills and sufficient intellectual powers "to attain the minimal understanding necessary to present a defense." ***Id.*** 568.

In denying London's motions to represent himself, the circuit court explained that it highly doubted that London, who falsely and repeatedly claimed to be a graduate of Harvard Law School, would be honest and would follow court orders during the trial. The court noted that London "is manipulative, in terms of the things he'll say and the things he'll do, in order to obtain the result he wants," and explained that it considered London's deliberate choice to repeatedly lie to the court a type of "psychological disability within the framework of ***State v. Klessig,*** [211 Wis. 2d 194]." The circuit court explained that London's inability to stop lying created "a serious impediment that significantly affect[ed] his ability to communicate a defense, a possible defense, to the jury." The circuit court also noted that London's repeated absences from court proceedings and his refusal to disclose his location to his attorney showed that he was incapable of moving the case forward as a *pro se* litigant. The circuit court's explanation shows that it properly concluded that London was not capable of representing himself. There would be no arguable merit to a claim that London is entitled to appellate relief from his conviction based on the fact that the circuit court would not allow him to represent himself.

The no-merit report next addresses whether there was sufficient evidence to convict London of the crimes. When reviewing the sufficiency of the evidence, we look at whether "'the evidence, viewed most favorably 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. Zimmerman***, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (quoting ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990)).

For the jury to convict London of Medical Assistance fraud, the State was required to prove beyond a reasonable doubt that: (1) London made a statement of material fact in an application for payment in connection with a Medical Assistance Program; (2) the statement was

false when London made it; (3) London made the statement intentionally, knowing it was false; and (4) the application was submitted for payment. WIS. STAT. § 49.49(1)(a)1 (2009-2010).

At trial, Vickie Gowan testified that she worked for the Milwaukee Center for Independence and assisted London, who is quadriplegic, in filing for benefits under the IRIS program, which allows persons with disabilities to hire personal care attendants. She testified about how the program worked and verified the account statements that London submitted in which he claimed that Anthony Owens, Jr., and Rebekah Vaughn worked for him, helping him with personal care services due to his disability.

Owens, Jr., testified that he did not provide any type of care services for London, who was his uncle. He further testified that he never received any compensation for providing services for London.

Vaughn testified that she knew London because she responded to an advertisement that he placed seeking help with personal care services. She testified that she worked for London for two days in February 2009, but London never paid her for her services.

Anthony Owens, Sr., testified that London is his brother and Owens, Jr., is his son. He testified that he did not work because he received Social Security Disability benefits. He told the jury that he received a letter from the Social Security Administration in 2010 informing him that he needed to come to their office because, according to the Social Security Administration, he had been working while receiving benefits. When he went to the office, they told him that taxes had been filed in his name indicating that he was working for London. He explained that the information they had was incorrect, and he was the victim of identity theft. Owens, Sr., testified

that he contacted London after the meeting and London offered him money to say that he was working for London. Owens, Sr., said he refused the offer.

Ricardo Ramirez Rivas testified that he worked at Moneygram International. He testified that he received a subpoena from the State of Wisconsin requesting copies of eight money orders, listed by serial number. Ramirez Rivas testified that he supplied copies of the eight money orders to an investigator for the State of Wisconsin. Ramirez Rivas identified the eight money orders, which were introduced into evidence.

Gregory Schuler testified that he works as a senior auditor with the Wisconsin Department of Justice, Medicaid Fraud Control and Elder Abuse Unit. Schuler testified that his first contact with London occurred when London called him seeking advice, explaining that he was the target of an investigation by the Social Security Administration based on what London characterized as a paperwork mistake involving his brother, Anthony Owens, Sr., and his nephew, Anthony Owens, Jr.

Schuler testified that he and his partner subsequently met with London at London's residence. London informed him that two people had been providing him care services under the IRIS program, Owens, Jr., from December 25, 2008 until April 2010, and Vaughn, from February 2009 until April 2010. Schuler testified that London told him that Owens, Jr., did not have a bank account, so London would receive Owens, Jr.'s paychecks at his house and he would have Owens, Jr., sign the checks over to him. He would then get money orders to pay Owens, Jr., after the checks cleared London's bank. Schuler testified that London told him he followed the same procedure with Vaughn. Schuler testified that London told him he deposited the checks into a business bank account in Washington D.C. under the name "Agora" because he

was only allowed to have $2000 in his personal account due to the fact that he received Social Security disability payments.

Schuler testified that London provided him with eight money order receipts that London told him corresponded to money orders that he used to pay Owens, Jr., and Vaughn. Schuler testified that he obtained copies of the money orders from Ramirez Rivas. The money orders were all made out to London, rather than Owens, Jr., and Vaughn. Schuler testified that he contacted Owens, Jr., and Vaughn, who both denied working for London.

Based on the testimony of the witnesses and the copies of the money orders, we agree with the no-merit report that there was sufficient evidence showing that London committed the crimes with which he was charged. There would be no arguable merit to a claim that the evidence was insufficient to support the verdict.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion. The circuit court imposed an aggregate sentence of six years, eight months, and two days of initial confinement, and eighteen months of extended supervision. The circuit court placed primary emphasis on London's character, explaining that he had a history of undesirable behavior throughout the pendency of the case, he was manipulative, and he had "shown himself to … be a pathological liar." The circuit court pointed out that London had been convicted of seventeen counts, but noted that each of the charges encompassed multiple criminal acts occurring over a period of time. The court stated that London was highly intelligent and had engineered the fraud. The court considered appropriate factors in deciding what length of sentence to impose and explained its application of the various sentencing guidelines in accordance with the framework set forth in ***State v. Gallion***,

2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, there would be no arguable merit to an appellate challenge to the sentence.

Our independent review of the record reveals no other potential issues. Therefore, we conclude that further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Kathleen A. Lindgren, is relieved of any further representation of London in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals