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DISTRICT II

December 14, 2016

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Jamin J. Hertlein
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You are hereby notified that the Court has entered the following opinion and order:

2016AP1230-CRNM State of Wisconsin v. Jamin J. Hertlein (L.C. # 2015CF71)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Jamin J. Hertlein appeals from a commitment order entered after a trial to the court and the court's finding that, as a repeat offender, he committed the offenses of felony bail jumping, disorderly conduct, resisting an officer, and criminal damage to property (three counts), and was not guilty by reason of mental disease or defect under WIS. STAT. § 971.17 (2013-14).¹ His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v.*

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

California, 386 U.S. 738 (1967). Hertlein received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Racine County sheriff deputies responded to a group home upon a report from the homeowner that Hertlein had head butted an individual in the home and was being combative. When deputies tried to remove Hertlein, he resisted and was eventually tased and removed to a squad car. The homeowner reported that Hertlein had broken a kitchen chair and damaged a toilet, a heater vent, dresser, shower head and other items.

Hertlein was charged as a repeat offender with felony bail jumping and seven misdemeanors: battery, disorderly conduct, resisting an officer, and four counts of criminal damage to property. After pretrial commitment and treatment restored Hertlein's competency to proceed, a trial to the court was held. The prosecution dismissed the battery charge because it was unable to present the victim's testimony. The court found Hertlein guilty of felony bail jumping, disorderly conduct, resisting an officer, and three counts of criminal damage to property based on damage to a dresser, heating vent, and shower head. The prosecution stipulated that Hertlein was not guilty by reason of mental disease or defect. At the disposition hearing, Hertlein agreed with the recommendation in the predisposition investigation report that he was in need of some period of institutional commitment. The court ordered Hertlein to be

committed for institutional care for a period of five years on the felony bail jumping offense and eighty months consecutive on the five misdemeanor offenses.²

The no-merit report addresses whether the evidence was sufficient to support the trial court's findings of guilt and the need for the period of commitment to institutional care, and whether Hertlein was denied the effective assistance of counsel. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further.

We have also considered whether there is any arguable challenge to Hertlein's waiver of his right to a jury trial and of his right to remain silent before testifying at trial. The trial court conducted an adequate colloquy with Hertlein on the waiver of these rights and there is no meritorious challenge to be made. Hertlein's repeat offender status was established in the record and not challenged. The length of the commitment was within the range allowed under WIS. STAT. § 971.17(1)(b) and (d), albeit the maximum allowed.

² WISCONSIN STAT. § 971.17(3)(a) provides:

The court shall order institutional care if it finds by clear and convincing evidence that conditional release of the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage. If the court does not make this finding, it shall order conditional release.

The trial court did not make a specific finding that Hertlein's conditional release would pose a significant risk of bodily harm or serious property damage. However, a specific finding was not necessary because Hertlein agreed that there needed to be some period of institutional commitment. The only issue at the disposition hearing was the length of time of the commitment.

Our review of the record discloses no other potential issues for appeal.³ Accordingly, this court accepts the no-merit report, affirms the commitment order, and discharges appellate counsel of the obligation to represent Hertlein further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Basil M. Loeb is relieved from further representing Jamin J. Hertlein in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

³ We observe that Hertlein was not offered the opportunity to speak at the disposition hearing. The statutory right to allocution under WIS. STAT. § 972.14(2) attaches only to a sentencing hearing. *State v. Turner*, 200 Wis. 2d 168, 177, 546 N.W.2d 880 (Ct. App. 1996). A commitment under WIS. STAT. § 971.17 is not a sentence and no right to allocution applied. *See* § 971.165(2) (the effect of a verdict of not guilty by reason of mental disease or defect “is that, in lieu of criminal sentence or probation,” the defendant is committed to the custody of the department of health services).