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DISTRICT II

January 11, 2017

To:

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Circuit Court Judge
Br. 8
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You are hereby notified that the Court has entered the following opinion and order:

2016AP285-CR

State of Wisconsin v. Eric T. Scott (L.C. #2014CF1390)

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

Eric T. Scott asks us to vacate two domestic abuse surcharges, totaling \$200, on the grounds that the circuit court failed to make “specific findings” that Scott lived with the victim when he beat her. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We deny Scott’s request as no “specific finding” is required by WIS. STAT. § 973.055.

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

Scott was charged with two counts of felony bail jumping, one count of felony strangulation and suffocation, domestic abuse, one count of felony intimidation of a victim, domestic abuse, one count of battery, domestic abuse,² one count of criminal damage to property, domestic abuse, and one count of disorderly conduct, domestic abuse, all in relation to an incident that occurred in the early morning hours of November 24, 2014. Police were called to the apartment Scott and his girlfriend, A.F.W., resided in after a neighbor heard a woman cry for help. When police arrived they heard a man yelling that he would kill her before police arrived. Police made a forced entry and found A.F.W. covered in blood. The criminal complaint expressly related that A.F.W. and Scott had resided together for about a year and that Scott became angry after A.F.W. told Scott she wanted him to move out. Scott has never alleged that he did not reside with A.F.W.

Scott pled no contest to one count of felony bail jumping, one count of felony intimidation of a victim, domestic abuse, and one count of substantial battery, domestic abuse, in return for the State dismissing and reading in all other counts and agreeing to make no specific recommendation at sentencing. Scott completed and filed with the court a written plea questionnaire that expressly included notice that the charges of intimidation of a victim and substantial battery both had a \$100 “domestic abuse surcharge” as the defendant resided with the victim. Scott told the court that he read and understood the entire plea questionnaire and that it was also read to him. Scott also told the court that he read the criminal complaint and that it could serve as a factual basis for his finding of guilt.

² Later amended by the State to substantial battery, domestic abuse.

The court did not expressly address the imposition of the two domestic abuse surcharges at either the plea or sentencing hearings, and the court did not specifically ask Scott if he resided with A.F.W. when he beat her.

The domestic abuse surcharges are not elements of the crime; they are ancillary and are only imposed upon conviction of certain statutory offenses. Scott was clearly put on notice of the surcharges and he does not argue to the contrary. As the surcharges were not an elemental fact and as Scott was aware that the surcharges would be imposed upon his conviction for intimidating a victim in violation of WIS. STAT. § 940.45(1) and substantial battery under WIS. STAT. § 940.19(2), the court did not err in failing to state, on the record, what Scott knew and acknowledged at his plea hearing: that he resided with the victim at the time of his offenses.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction and order denying Scott's postconviction motion are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals