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DISTRICT IV

May 15, 2017

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

2015AP372-CRNM State of Wisconsin v. Jerry E. McGill (L.C. # 2007CF100)
2015AP373-CRNM State of Wisconsin v. Jerry E. McGill (L.C. # 2010CF136)

Before Lundsten, Higginbotham and Sherman, JJ.

Attorney Anthony Jurek, appointed counsel for Jerry McGill, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)[1] and ***Anders v. California***, 386 U.S. 738 (1967). McGill filed several responses, and counsel has filed two supplemental no-merit reports. We conclude that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21.

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

After our independent review of the records, we conclude there is no arguable merit to any issue that could be raised on appeal.

McGill pled no contest to two counts of substantial battery, one count of third-degree sexual assault, one count of false imprisonment, and one count of bail jumping. The court imposed a combination of concurrent and consecutive sentences that totaled six years of initial confinement and eight years of extended supervision.

The no-merit report addresses whether McGill's pleas were entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charges, the rights McGill was waiving, and other matters. The record shows no other ground to withdraw the pleas.

In one of his responses to the no-merit report, McGill asserts that his "ability to fully comprehend each and every legal proceeding was not true." He asserts that testing showed him with a seventh grade "comprehension level," and that with a level in this range, he "would not [have] been able to fully understand any and all legal proceeding[s]." However, McGill does not name any specific fact or concept that he did not understand at the time it was necessary for him to understand it. McGill has not shown that there is arguable merit to this issue.

The no-merit report addresses whether the court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well-established and need not be repeated here. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not

consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

In a previous order, we directed McGill's attorney to review whether the domestic abuse surcharge was applied in this case and, if it was, whether it properly applies. Counsel reports that the clerk of the circuit court has informed him that the surcharge was not applied. Therefore, there is no arguable merit to this issue.

In his responses, McGill suggests several reasons that he believes would have justified a change of venue. No motion for a change of venue was filed before McGill pled no contest to the charges. Therefore, this issue was waived by his no-contest pleas, and any issue related to change of venue would probably have to be framed as a claim that counsel was ineffective by not filing such a motion.

To establish ineffective assistance of counsel a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To demonstrate prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ***Id.*** at 694. A reasonable probability is one sufficient to undermine confidence in the outcome. ***Id.***

McGill asserts that a change of venue would have been proper because his sister was clerk of courts at the time of his arrest. He does not explain, and it is not apparent to us, why a change of venue would be required based on that fact.

McGill asserts that his parents owned a bar that was frequented by the district attorney, police, city officials, judges, and McGill, and that he was known at the bar as "being a drinker and drug user." This fact, even if true, would not be a reasonable basis for a motion to change venue. The assertion does not identify any specific person, other than the district attorney, who was involved in this case. As to the district attorney, there is no basis in the record to conclude that any such knowledge influenced the outcome of this case.

McGill also argues that there should have been a change of venue, or removal of the district attorney, because McGill "was accused of sleeping with [the] District Attorney's … wife." McGill asserts that this was "stated in a pre-sentence report." This is a reference to a statement reported in the defense's alternative presentence report. That report quoted McGill's half-sister as saying that she believed the case arose because the district attorney "didn't like Jerry from off duty functions at the bar. [The district attorney] accused Jerry of sleeping with his wife."

This undeveloped factual assertion, by itself, is not sufficient to support a claim of ineffective assistance on this ground. We note that while the named district attorney is the one who filed the charges, the eventual plea disposition and sentencing were handled by a successor district attorney. Accordingly, there is no reason to believe that the ultimate outcome of the case was affected by the original district attorney's views on this subject, even if they were as alleged by McGill.

McGill appears to argue that the circuit court erred in a pre-plea evidentiary ruling in which it granted the State's motion in limine to prevent admission of a letter from the victim. This issue was waived by McGill's no-contest pleas.

McGill asserts that the prosecutor misstated during her sentencing argument that blood was found on a certain chair, when in fact a lab report showed it to be soda. There is no arguable merit to this issue because there is no reason to believe that correcting this error would have affected the court's ultimate sentence.

In addition to these issues, McGill has expressed dissatisfaction about many other aspects of his case. Some of these complaints are difficult to understand, and the others fail to suggest any basis for legal relief. To the extent that we have not addressed any of these other issues specifically in this order, we have nonetheless reviewed them and determined that they have no arguable merit.

Our review of the records discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Jurek is relieved of further representation of McGill in these matters. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals