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DISTRICT II

July 5, 2017

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

2017AP365-CRNM State of Wisconsin v. Leon Reynolds (L.C. #2015CF43)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

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 (2015-16).

Leon Reynolds appeals from a judgment convicting him of battery by prisoners. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Reynolds was advised of his right to file a response but has not done so. After reviewing the no-merit report and the record, we conclude there are no issues with arguable merit for appeal. We summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

While an inmate at Oshkosh Correctional Institution, Reynolds struck corrections officer Sandra Beulen after she pepper-sprayed him for disregarding her and other officers' direct orders and riling up fellow prisoners with shouts that his rights were being violated. Beulen suffered a sprained jaw, lacerations, contusions, and a "large lump" on her head. A jury found him guilty. The trial court sentenced him to three years' initial confinement plus two years' extended supervision consecutive to his current sentence. He was transferred to the maximum security prison in Boscobel. This appeal followed.

The no-merit report first addresses whether the trial court erred when it denied Reynolds' motion, made four days before trial, to adjourn the February 9, 2016 jury trial based on his claim that he did not know the trial had been set for that date. Trial already had been rescheduled four times. The court also noted that Reynolds had been excused from the prior pretrial at his own request, that it was concerned he might be "somewhat manipulating the system," and that both parties were ready to try the case. The court properly exercised its discretion in denying the motion. *See* ***State v. Berg***, 116 Wis. 2d 360, 369-70, 342 N.W.2d 258 (Ct. App. 1983). In any

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

event, the trial later was adjourned to March 14, 2016. Any challenge to the denial of Reynolds' pretrial motion would be frivolous.

The report also considers Reynolds' waiver of his fundamental right not to testify at trial. *See* ***State v. Denson***, 2011 WI 70, ¶56, 335 Wis. 2d 681, 799 N.W.2d 831. While the court was not obliged to engage Reynolds in an on-the-record colloquy before accepting his waiver, it followed the "better practice" and did so. *See* ***id.***, ¶¶63, 67. The record makes clear that Reynolds' waiver was knowingly, voluntarily, and intelligently made. No issue of arguable merit could arise from this point.

The report next examines whether the evidence at trial was sufficient to support a verdict of guilt beyond a reasonable doubt. A person is guilty of battery by prisoners if he or she is a prisoner confined to a state prison and intentionally causes bodily harm to an officer without the officer's consent. WIS. STAT. § 940.20(1). The only issue here was intent.

Beulen testified that Reynolds came at her with his hands clenched and his arms "wildly swinging." Other officers who witnessed the incident testified that Reynolds "attacked," "lunged," or "charged" at Beulen and "punched" her in the face twice. Reynolds testified that he was swinging at the can to avoid being sprayed again, so if he did hit strike Beulen, it was not intentional because the spray "blinded" him. It was for the jury to decide witness credibility and reconcile inconsistencies in the testimony. *See* ***Morden v. Continental AG***, 2000 WI 51, ¶39, 235 Wis. 2d 325, 611 N.W.2d 659. Further, the jury could have inferred intent from Reynolds' conduct, words, and gestures. *See* ***State v. Stewart***, 143 Wis. 2d 28, 35, 420 N.W.2d 44 (1988). Viewed most favorably to the State and the conviction, we cannot say that the evidence is so insufficient in probative value and force that, as a matter of law, no reasonable trier of fact could

have found guilt beyond a reasonable doubt. ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990).

Finally, the report addresses the trial court's exercise of sentencing discretion. At sentencing, the trial court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and must determine which are of greatest importance, ***State v. Gallion***, 2004 WI 42, ¶41, 270 Wis. 2d 535, 678 N.W.2d 197. To fulfill the sentencing objectives, the court should consider factors that include the gravity of the offense, the character of the offender, and the protection of the public, ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695, and provide a "rational and explainable basis" for the sentence imposed, ***Gallion***, 270 Wis. 2d 535, ¶39 (citation omitted).

The incident occurred in an open bunk area. The court found the offense to be aggravated, as other inmates could have gotten more actively involved, and Reynolds' "very concerning prior offenses" reflected poorly on his character. The court noted that, while the public is protected because Reynolds already is incarcerated, the public still has an interest in inmates not being assaultive toward prison staff. The court explained that the seriousness of the offense and Reynolds' character warranted imposing the maximum initial confinement and that making it consecutive was necessary, as a concurrent sentence would "serve as no additional punishment" for him.

We also have considered whether there exists any issue relating to jury selection, the jury instructions, opening statements, or closing arguments. Our independent review of the record satisfies us that any of these possible issues would lack arguable merit for appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Angela Dawn Henderson is relieved from further representing Reynolds in this appeal. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals