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DISTRICT II

October 18, 2017

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

2016AP2464-CRNM State of Wisconsin v. Jermaine A. Hampton (L.C. # 2014CF724)

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

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).

Jermaine A. Hampton appeals from a judgment convicting him of possession of a firearm by a felon and first-degree recklessly endangering safety. Hampton's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)¹ and *Anders v. California*, 386

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

U.S. 738 (1967). Hampton received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

Hampton was convicted following a jury trial of possession of a firearm by a felon and first-degree recklessly endangering safety. The charges stemmed from a disturbance in which Hampton, a convicted felon,² fired a gun at an occupied house. For his actions, the circuit court imposed an aggregate sentence of seven years of initial confinement followed by eight years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether the evidence at trial was sufficient to support Hampton's convictions. When reviewing the sufficiency of the evidence, we may not substitute our judgment for that of the jury unless the evidence, viewed most favorably to the State and the convictions, is so lacking in force and probative value that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Our review of the trial transcripts persuades us that the State produced ample evidence to convict Hampton of his crimes. We agree with counsel that a challenge to the sufficiency of the evidence would lack arguable merit.

² Hampton was previously convicted of armed robbery with threat of force as party to a crime.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing.³ The record reveals that the court’s sentencing decision had a “rational and explainable basis.” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In making its decision, the court considered the seriousness of the offenses, Hampton’s character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, the sentence imposed does not “shock public sentiment and violate the judgment of reasonable people concerning what is right and proper.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Hampton’s sentence would lack arguable merit.

In addition to the foregoing issues, we considered other potential issues that arise in cases tried to a jury, *e.g.*, jury selection, objections during trial, confirmation that the defendant’s waiver of the right to testify is valid, use of proper jury instructions, and propriety of opening statements and closing arguments. Here, the jury was selected in a lawful manner. Objections during trial were properly ruled on.⁴ When Hampton elected not to testify, the circuit court conducted a proper colloquy to ensure that his waiver was valid. The jury instructions accurately conveyed the applicable law and burden of proof. No improper arguments were made to the jury

³ In the no-merit report, counsel uses the phrase “abuse of discretion.” We have not used the phrase “abuse of discretion” since 1992, when our supreme court replaced the phrase with “erroneous exercise of discretion.” *See, e.g., Shirk v. Bowling, Inc.*, 2001 WI 36, ¶9 n. 6, 242 Wis. 2d 153, 624 N.W.2d 375.

⁴ One objection deserves brief mention. During the State’s case-in-chief, a witness indicated that he saw a person whom he “assume[d]” to be the defendant at the disturbance. Hampton’s attorney objected to this testimony as an improper identification and asked for a mistrial. The prosecutor subsequently clarified with the witness that he could not actually identify the defendant as the person he saw. In light of this clarification, the circuit court found no prejudice and properly declined to grant a mistrial.

during opening statements or closing arguments. Accordingly, we conclude that such issues would lack arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Ralph J. Sczygelski of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Ralph J. Sczygelski is relieved of further representation of Hampton in this matter.

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

Diane M. Fremgen
Clerk of Court of Appeals