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DISTRICT II

November 8, 2017

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

2017AP33-CRNM State of Wisconsin v. Nathaniel L. Robinson (L.C. # 2014CF426)

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).

Nathaniel L. Robinson appeals from a judgment convicting him of battery by a prisoner. Robinson's 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). Robinson filed a response. After reviewing

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

the record, counsel's report, and Robinson's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

Robinson was convicted following a jury trial of battery by a prisoner. The charge stemmed from his attack on another inmate while confined at the Kettle Moraine Correctional Institution. For his action, the circuit court imposed a sentence of one year of initial confinement and two years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether the evidence at trial was sufficient to support Robinson's conviction. 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 conviction, 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 transcript persuades us that the State produced ample evidence to convict Robinson of his crime. We agree with counsel that a challenge to the sufficiency of the evidence would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. 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 offense, Robinson'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 Robinson’s sentence would lack arguable merit.

Finally, the no-merit report addresses several other issues, including (1) whether the circuit court properly decided a pretrial motion to introduce other acts evidence against the victim, (2) whether the State’s prosecution of Robinson following the prison’s discipline of him violated double jeopardy, and (3) whether Robinson was afforded effective assistance of trial counsel.² We are satisfied that the no-merit report properly analyzes these issues as without merit, and we will not discuss them further.

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, 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. The jury instructions accurately conveyed the applicable law and burden of proof. No improper arguments were made to the jury during opening statements or closing arguments. Accordingly, we conclude that such issues would lack arguable merit.

As noted, Robinson filed a response to counsel’s no-merit report. The response is difficult to decipher, as it is rambling and somewhat nonsensical. It appears to focus on the same

² One instance of alleged ineffective assistance deserves brief mention. At trial, after the State rested, Robinson’s attorney indicated that he had forgotten to impeach the victim with his prior record. To remedy this, the prosecutor agreed not to ask Robinson about his prior record. As the prosecutor explained, “They are both in prison so I don’t really ... think it’s too much of a concern here.” Robinson approved the proposed solution and subsequently testified in the case. In light of the foregoing, we are satisfied that counsel’s failure to impeach the victim with his prior record does not present an issue of arguable merit.

issues raised in the no-merit report. It also appears to suggest that Robinson's action was justified by the stress of prison. In any event, we are not persuaded that the response presents an issue of 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 William J. Donarski 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 William J. Donarski is relieved of further representation of Robinson in this matter.

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

Diane M. Fremgen
Clerk of Court of Appeals