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DISTRICT III

March 6, 2018

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

2017AP283-CRNM State v. Robert T. Hinzman (L. C. No. 2015CF219)

Before Stark, P.J., Hruz and Seidl, 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).

Counsel for Robert Hinzman filed a no-merit report concluding there is no arguable basis for Hinzman to challenge his convictions and sentences for three counts of second-degree sexual assault/use of force, two counts of strangulation and suffocation, false imprisonment, victim intimidation and aggravated battery, all as a repeater. Hinzman filed a response challenging the

admission of other acts evidence involving crimes for which he was acquitted: asserting without any explanation that unidentified witnesses were not called; arguing the rape test kit was never tested and claiming “it’s not my DNA;” and complaining that his sentence was seven years longer than recommended by the presentence investigation (PSI) and the State. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

The victim told police she was sexually assaulted by Hinzman over a period of hours at his residence when she went there to pick up some personal belongings. In a recorded telephone conversation, the victim asked Hinzman why he raped her and he responded, “[Y]ou called me a bitch.” He also said, “I flipped out, I was emotionally charged.” When asked why he choked her, Hinzman responded he was “really hurt” and he “just snapped.” Hinzman told the victim not to tell anyone because if anyone finds out, it would trigger him again.

The no-merit report addresses whether the circuit court properly admitted other acts evidence, whether two of the State’s witnesses were properly qualified as expert witnesses, whether the court properly denied Hinzman’s motion for *in-camera* inspection of the victim’s psychological medical records, whether the court conducted a proper colloquy regarding Hinzman’s decision not to testify, whether sufficient evidence supports the verdicts, and whether the court properly exercised its discretion when it imposed concurrent sentences of fifteen years’ initial confinement and fifteen years’ extended supervision. We agree with counsel’s analysis of these issues.

Hinzman questions why witnesses were allowed to testify regarding other incidents for which he was acquitted. Other acts evidence is admissible under WIS. STAT. § 904.04(2)

(2015-16),¹ if a reasonable jury could find by a preponderance of the evidence that the defendant committed the other act. *State v. Landrum*, 191 Wis. 2d 107, 119-20, 528 N.W.2d 36 (Ct. App. 1995). That an earlier trier of fact did not find proof beyond a reasonable doubt does not preclude a subsequent jury from finding, by a preponderance of the evidence, that the act occurred. The difference in the burdens of proof would allow a reasonable jury to find Hinzman committed the other acts despite his acquittal. *See id.*

Hinzman's complaint that the rape kit was never tested and his claim that "it's not my DNA" provide no basis for appeal because DNA would only be relevant to identifying the perpetrator, and there was no question regarding identity. The victim was personally familiar with Hinzman.

Hinzman's arguments regarding the length of the sentences provide no basis for appeal. No law prohibits the court from imposing a longer sentence than the parties or the PSI recommend. The court could have imposed consecutive sentences totaling 154 years' imprisonment. Because the sentences were well within the maximum, they provide no arguable basis for appeal. *See State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507.

Our independent review of the record discloses no other potential issue for appeal.

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

Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Erica Bauer is relieved of her obligation to further represent Hinzman in this matter. WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals