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July 12, 2018

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

2017AP719-CRNM State of Wisconsin v. John C. Featherston (L.C. # 2016CF26)

Before Sherman, Kloppenburg and Fitzpatrick, 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).

Attorney Frances Colbert, appointed counsel for John Featherston, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16)[1] and ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses: (1) the

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

sufficiency of the evidence to support the jury verdict; (2) whether there would be arguable merit to a challenge to the circuit court's evidentiary rulings; and (3) whether there would be arguable merit to a challenge to the sentence imposed by the circuit court. Featherston has submitted several responses to the no-merit report. Upon independently reviewing the entire record, as well as the no-merit report and responses, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Featherston was convicted of second-degree recklessly endangering safety as an act of domestic abuse, following a jury trial. The circuit court withheld sentence and imposed five years of probation, with one year of conditional jail time.

The no-merit report addresses whether the evidence was sufficient to support the conviction. A claim of insufficiency of the evidence requires a showing that "the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). We agree with counsel's assessment that there would be no arguable merit to an argument that that standard has been met here. The evidence at trial, including testimony by the victim that Featherston pointed a loaded gun at her head and supporting testimony by investigating officers, was sufficient to support the conviction for second degree recklessly endangering safety as an act of domestic abuse. *See* WIS. STAT. § 941.30(2); WIS JI—CRIMINAL 1347 (elements of second-degree recklessly endangering safety are that the defendant: (1) endangered the safety of another human being; and (2) did so by criminally reckless conduct, that is, conduct that created a risk of death or great bodily harm that was unreasonable and substantial, and the defendant was aware of the risk); WIS. STAT. § 968.075(1)(a)4. (defining

"[d]omestic abuse" as including an act against a current or former co-habitant that causes the other to reasonably fear imminent intentional infliction of physical injury).

The no-merit report also addresses whether there would be arguable merit to a challenge to the circuit court's admission of other acts evidence of Featherston's prior acts of domestic abuse of the victim. We agree with counsel that this issue would lack arguable merit. The circuit court determined that the other acts evidence was offered for the proper purpose of showing Featherston's motive and the context of the relationship between Featherston and the victim; that the evidence was relevant for the same reason; and that its probative value was not outweighed by the danger of unfair prejudice. *See* WIS. STAT. § 904.04(2); ***State v. Sullivan***, 216 Wis. 2d 768, 576 N.W.2d 30 (1998). Additionally, the court observed that the other acts evidence was per se admissible under WIS. STAT. § 904.04(2)(b)1. We discern no arguable merit to a challenge to the circuit court's decision to admit the evidence.

Finally, the no-merit report addresses whether a challenge to Featherston's sentence would have arguable merit. Our review of a sentence determination begins "with the presumption that the [circuit] court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). The record establishes that Featherston was afforded the opportunity to address the circuit court prior to sentencing. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including Featherston's character and criminal history, the seriousness of the offense, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶ 39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The court withheld sentence and imposed five years of probation, with one year of conditional jail time. The sentence was well within the maximum Featherston

faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See* ***State v. Stenzel***, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances" (quoted source omitted)). We discern no erroneous exercise of the court's sentencing discretion.

Featherston asserts in his no-merit responses that he fired his attorney "before the sentencing hearing when I got revoked" and that "the two correctional officer[s] the State used [to] revoke me had a[n] axe to grind." It appears that Featherston is attempting to raise issues related to his probation revocation, which occurred in April 2017. However, any issues related to Featherston's subsequent probation revocation are outside the scope of this appeal from the October 2016 judgment of conviction. *See* WIS. STAT. RULE 809.10(4).

Featherston asserts that he was bullied by a correctional officer at a hearing when he took a seat that was ordinarily used by the attorney. Featherston does not explain which hearing he is referencing. In any event, Featherston does not explain how the officer's actions would give rise to a non-frivolous challenge to Featherston's conviction or sentence.

Featherston asserts that the presiding judge should have recused himself because, Featherston asserts, the judge was good friends with the victim's sister. Featherston asserts that the judge and the victim's sister were high school classmates and are still friends. However, Featherston does not explain why the claimed friendship between the judge and the victim's sister would have caused the judge not to be impartial. Nothing in the record or the no-merit

report would support a non-frivolous claim that the judge was biased. *See* ***State v. Gudgeon***, 2006 WI App 143, ¶¶20-21, 295 Wis. 2d 189, 720 N.W.2d 114 (claim of judicial bias must show either subjective bias, meaning that the judge has "personal doubts as to whether [he or she] can avoid partiality to one side," or objective bias, meaning that "a reasonable person could question the judge's impartiality").

Featherston asserts that he did not endanger the victim and that he acted in self-defense. However, Featherston raised those defenses at trial. As explained above, the evidence was sufficient to support the jury's verdict.

Featherston asserts criminal or otherwise wrongful conduct by the victim, Featherston's former employer, correctional officers, and others. However, the alleged wrongful conduct does not relate to Featherston's conviction or sentence in this case. Featherston does not explain how his allegations would correlate to a non-frivolous challenge to his conviction or sentence.

Featherston asserts that the court "made me take my attorney." However, the record reveals that, at a pretrial hearing, the circuit court addressed Featherston's request to have his attorney withdraw. After a discussion regarding Featherston's complaints as to his level of communication with his counsel, Featherston confirmed that he wished to continue with his counsel. Accordingly, we discern no arguable merit to further proceedings on this issue.

Featherston asserts that his attorney was unprepared, that the public defender system is deficient, and that he was only able to communicate with his counsel by mail. However, nothing in the no-merit responses or the record would support a non-frivolous allegation of ineffective assistance of counsel. *See* ***Strickland v. Washington***, 466 U.S. 668, 687-694 (1984) (claim of ineffective assistance of counsel "must show that counsel's performance was deficient [in that]

counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment," and also that "the deficient performance prejudiced the defense," that is, that "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable").

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Frances Colbert is relieved of any further representation of John Featherston in this matter. *See* 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