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DISTRICT III

July 26, 2018

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

2017AP1234-CRNM State of Wisconsin v. Jesse A. Henson (L.C. # 2015CF265)

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 Jesse Henson filed a no-merit report concluding no grounds exist to challenge Henson's conviction for first-degree sexual assault of a child by means of sexual

contact with a person under the age of thirteen, contrary to WIS. STAT. § 948.02(1)(e) (2015-16).¹ Henson was informed of his right to file a response to the no-merit report and has not responded.

A second amended information² charged Henson with repeated sexual assault of a child, incest and two counts of first-degree sexual assault by sexual contact with a child under the age of thirteen. Henson, who was living in Montana, was extradited to Wisconsin. At the outset of the criminal proceedings, the circuit court granted defense counsel's request for a competency examination and, following an examination, Henson was found competent to proceed.

In exchange for Henson's guilty plea to one count of first-degree sexual assault by sexual contact with a child under the age of thirteen, the State agreed to dismiss and read in the remaining counts. The parties remained free to argue at sentencing, but defense counsel was limited to arguing for no less than ten years of initial incarceration. If, however, the presentence investigation report recommended less than ten years, defense counsel was allowed to argue for the same. Out of a maximum possible sixty-year sentence, the circuit court imposed a forty-five-year sentence consisting of thirty years' initial confinement and fifteen years' extended supervision.

The no-merit report addresses whether the record supports the circuit court's competency determination and whether Henson knowingly, intelligently and voluntarily entered his guilty plea. After reviewing the record, we agree with counsel's conclusion that there is no arguable merit to these issues. The no-merit report also concludes that any challenge to the circuit court's

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

² Although the document is identified as a "3rd Amended Information," the record reflects only one prior amended information.

sentencing discretion likewise lacks arguable merit, but identifies a possible error on the judgment of conviction.

The no-merit report recounts that the sentencing court ordered Henson to pay the expenses of extradition, but referred to the reimbursement amount as “restitution” instead of a cost. A “Restitution Information” form submitted to the court included the extradition costs and, consistent with that form, the court ordered \$1,530.10 in restitution, consisting of \$1391 in extradition expenses plus an additional 10% surcharge. The no-merit report points out that restitution to the county cannot be ordered where the county was not an “actual victim of crimes.” See *State v. Schmaling*, 198 Wis. 2d 756, 761, 543 N.W.2d 555 (Ct. App. 1995). Further, the no-merit report emphasizes that “costs” that may be assessed against a defendant convicted of a crime include “the fees and disbursements of the agent appointed to return a defendant from another state or country.” WIS. STAT. § 973.06(1)(a). Both the sentencing court and, consequently, the judgment of conviction refer to what are extradition expenses as “restitution,” which also resulted in the addition of a restitution surcharge on the judgment.

The court having considered the record and the no-merit report, we cannot say there is no arguable merit to challenge the restitution imposed. The no-merit report asks this court to simply order the judgment corrected on remittitur. Because the requested correction to the judgment involves more than an alleged scrivener’s error, we conclude the motion should be directed to the circuit court. We will therefore reject the no-merit report, dismiss this appeal and extend the time for counsel to file a postconviction motion.

Upon the foregoing,

IT IS ORDERED that the no-merit report is rejected and the appeal is dismissed.

IT IS FURTHER ORDERED that the time for filing a postconviction motion is extended to August 27, 2018.

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

Sheila T. Reiff
Clerk of Court of Appeals