OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

September 5, 2018

To:

Hon. Robert E. Eaton
Circuit Court Judge
Ashland County Courthouse
201 W. Main St.
Ashland, WI 54806-1688

Kerrie Ferrando
Clerk of Circuit Court
Ashland County Courthouse
201 W. Main St.
Ashland, WI 54806-1688

Ruth D. Kressel
Acting District Attorney
201 W. Main St., #301
Ashland, WI 54806

Mark A. Schoenfeldt
Law Firm of Mark Schoenfeldt
230 W. Wells St., Ste. 706
Milwaukee, WI 53203

Justin Allen Bey 554174
Waupun Corr. Inst.
P.O. Box 351
Waupun, WI 53963-0351

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

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

2017AP338-CRNM State of Wisconsin v. Justin Allen Bey (L. C. No. 2014CF90)

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 Justin Bey filed a no-merit report concluding no grounds exist to challenge Bey's convictions for strangulation and suffocation as a domestic abuse incident, and for misdemeanor bail jumping. Bey was informed of his right to file a response to the no-merit report and has not responded. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue

that could be raised on appeal. Therefore, the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21 (2015-16).[1]

The State charged Bey with false imprisonment; strangulation and suffocation; misdemeanor battery; disorderly conduct; threatening to injure with the intent to compel a person to do an act against that person's will; and misdemeanor bail jumping—the first four counts as acts of domestic abuse. The charges arose from what was reported to law enforcement as "an ongoing domestic disturbance" between Bey and his live-in girlfriend, Jill.[2] The complaint alleged that during an argument, Bey pushed Jill around, "head butted her a couple times," and "slammed her head into the wall two to four times." The complaint further alleged that when Jill threatened to call the police, Bey pinned her on the bed and started to choke her, causing her to feel dizzy. While choking Jill, Bey allegedly stated: "If you want to call the cops, this is what happens to cop callers." Bey then permitted Jill to use the bathroom, but he pushed the bed in front of the door to prevent her from exiting the bathroom. When another roommate told Bey that he had called the police, Bey left the residence.

In exchange for Bey's no-contest pleas to strangulation and suffocation as a domestic abuse incident and to misdemeanor bail jumping, the State agreed to dismiss and read in the remaining charges and cap its sentence recommendation at thirty months of initial confinement and twenty-four months of extended supervision. Out of maximum possible aggregate sentences totaling six years and nine months, the circuit court imposed concurrent sentences resulting in a

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

[2] Pursuant to WIS. STAT. RULE 809.86(4), we use a pseudonym instead of the victim's name.

four-year term, consisting of one year of initial confinement and three years of extended supervision, to run consecutive to Bey's sentence in a Forest County case.

The no-merit report addresses whether Bey knowingly, intelligently and voluntarily entered his no-contest pleas; whether the circuit court properly exercised its sentencing discretion; and whether there are any grounds to challenge the effectiveness of Bey's trial counsel. Upon reviewing the record, we agree with counsel's analysis and conclusion that there is no arguable merit to these issues.

We note that the judgment of conviction reflects a total of $450 in DNA surcharges. *See* WIS. STAT. § 973.046(1r) (requiring circuit court to impose a $250 surcharge for each felony conviction and a $200 surcharge for each misdemeanor conviction). Because of the multiple DNA surcharges, we previously put this appeal on hold pending the Wisconsin Supreme Court's decision in ***State v. Odom***, No. 2015AP2525-CR, which was expected to address whether a defendant could withdraw a plea because the defendant was not advised at the time of his plea that multiple mandatory DNA surcharges would be assessed. Odom asserted the surcharge is punitive when assessed on a per-count basis against a defendant with multiple convictions and is, therefore, part of the "potential punishment" a circuit court must ensure a defendant understands. The ***Odom*** appeal, however, was voluntarily dismissed before oral argument.

This case was then held for a decision in ***State v. Freiboth***, 2018 WI App 46, __ Wis. 2d __, __ N.W.2d __. In ***Freiboth***, we determined that a plea hearing court does not have a duty to inform the defendant about the mandatory DNA surcharge because the surcharge is not punishment and is, therefore, not a direct consequence of the plea. ***Id.***, ¶12. In light of the

holding in ***Freiboth***, there is no arguable merit to a claim for plea withdrawal based on the assessment of multiple mandatory DNA surcharges.

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

Therefore,

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

IT IS FURTHER ORDERED that attorney Mark A. Schoenfeldt is relieved of his obligation to further represent Bey 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