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November 29, 2018

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

2017AP2088-CRNM State v. Daniel J. Helgeson (L.C. # 2016CF215)

Before Lundsten, P.J., Blanchard and Kloppenburg, JJ.

Daniel Helgeson appeals a judgment convicting him, following a one-day jury trial, of one count of burglary, one count of possession of burglarious tools, and one count of criminal damage to property. *See* WIS. STAT. §§ 943.10(1m)(a), 943.12, 943.01(1).[1] Attorney Mark Schoenfeldt has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; ***Anders v. California***, 386 U.S. 738, 744 (1967); and ***State ex rel. McCoy v.***

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

Wisconsin Court of Appeals, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the sufficiency of the evidence, the validity of the sentence, and the effectiveness of trial counsel's assistance. Helgeson was sent a copy of the report but has not responded. Upon reviewing the entire record as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

The no-merit report addresses whether there was sufficient credible evidence to support the guilty verdicts. When reviewing the sufficiency of the evidence to support a conviction, the test is whether "the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force 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). To prove Helgeson guilty of burglary, the State needed to provide evidence that Helgeson intentionally entered a dwelling—in this case, the home of D.C. —without D.C.'s consent, with intent to steal or commit a felony. *See* WIS. STAT. § 943.10(1m)(a). To prove Helgeson guilty of possession of burglarious tools, the State needed to provide evidence that Helgeson was in personal possession of tools intended, designed, or adapted for use in a break-in, and that he possessed the tools with the intention to use them to break into and steal from the home. *See* WIS. STAT. § 943.12. To prove Helgeson guilty of criminal damage to property, the State needed to provide evidence that he intentionally damaged D.C.'s property without D.C.'s consent. *See* WIS. STAT. § 943.01(1).

At trial, the jury heard testimony from D.C.'s neighbor that, on February 20, 2016, she observed a man walk through D.C.'s yard and attempt to pry open the door. The neighbor called 911. She testified that the same man had rung her doorbell about an hour before she saw him in the yard, and that he had asked if D.C. was home.

One of the officers who responded to the 911 call testified that he observed a broken window on the back door of D.C.'s home and, after a few minutes, saw a man exit the door. The man identified himself as Helgeson and was taken into custody. More than one officer observed that there were tools in Helgeson's pockets. The arresting officer testified that, when he searched Helgeson, he found a pair of pliers, a screwdriver, and what appeared to be a tool for removing lug nuts. The arresting officer further testified that Helgeson waived his Miranda rights and spoke about why he was at the house.

At first, Helgeson told the arresting officer that he was there to retrieve his driver's license. Helgeson admitted that he had used the tools to get into the residence and that he had broken the window. When the arresting officer questioned whether Helgeson was being truthful, Helgeson said he had been "blowing smoke" and changed his story to say he came to obtain a chain saw. Helgeson told the arresting officer he knew D.C. was not home and admitted he did not have permission to be there.

At trial, Helgeson testified that, while he and D.C. were both incarcerated, they had discussed the possibility of doing tree removal work together. According to Helgeson, D.C. told him about a number of saws he owned, including a stick saw. Helgeson testified that it was his understanding that he could live with D.C. and they would use D.C.'s saws to get a tree business going.

D.C. also testified at trial. He denied that he ever discussed tree removal or saws with Helgeson. D.C. further testified that he did not give anyone permission to be in his home on February 20, 2016.

When there is conflicting testimony, it is the jury's function to decide the credibility of witnesses and reconcile any inconsistencies in the testimony. ***State v. Toy***, 125 Wis. 2d 216, 222, 371 N.W.2d 386 (Ct. App. 1985). Moreover, a jury is free to piece together the bits of testimony it finds credible to construct a chronicle of the circumstances surrounding the crime. *See* ***State v. Sarabia***, 118 Wis. 2d 655, 663-64, 348 N.W.2d 527 (1984). Further, "[f]acts may be inferred by a jury from the objective evidence in a case." ***Shelley v. State***, 89 Wis. 2d 263, 273, 278 N.W.2d 251 (Ct. App. 1979). We are satisfied that the evidence submitted at trial was sufficient to support Helgeson's convictions.

Our review of the trial transcript discloses no other issues of arguable merit. There is no basis to challenge jury selection. Evidentiary objections throughout the trial were properly ruled on and no potentially objectionable testimony was elicited. The circuit court conducted an on-the-record colloquy and ascertained that Helgeson knowingly, voluntarily, and intelligently waived his right not to testify. *See* ***State v. Denson***, 2011 WI 70, ¶8, 335 Wis. 2d 681, 799 N.W.2d 831 (on-the-record colloquy is recommended, but not required, when a defendant waives the right not to testify). The jury instructions accurately conveyed the applicable law and burden of proof. No improper arguments were made to the jury.

The no-merit report also discusses the effectiveness of Helgeson's trial counsel. This court has independently reviewed the record and concludes there would be no basis for a claim of ineffective assistance of trial counsel. To establish ineffective assistance of counsel, Helgeson must show that his counsel's performance was not within the range of competence demanded by attorneys in criminal cases and that the ineffective performance affected the outcome of the trial. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). Any claim of ineffective assistance must first be raised in the circuit court. *See* ***State v. Machner***, 92 Wis. 2d 797, 804, 285 N.W.2d 905

(Ct. App. 1979). Our review of the record and the no-merit report discloses no arguably meritorious basis for challenging trial counsel's performance, and no grounds for counsel to request a ***Machner*** hearing.

The no-merit report also addresses whether the circuit court erroneously exercised its sentencing discretion. The court imposed three years of initial confinement and three years of extended supervision on the burglary count, two years of initial confinement and two years of extended supervision on the count of possession of burglarious tools, and eighteen months of initial confinement and six months of extended supervision on the count of criminal damage to property, all to run concurrently. The components of the bifurcated sentences imposed were within the applicable penalty ranges. *See* WIS. STAT. §§ 943.10(1m)(a) (classifying burglary of a building or dwelling as a Class F felony); 943.12 (classifying possession of burglarious tools as a Class I felony); 943.01(1) (classifying criminal damage to property as a Class A misdemeanor); 973.01(2)(b)6m and (d)4 (providing maximum terms of seven and one-half years of initial confinement and five years of extended supervision for a Class F felony); 973.01(2)(b)9 and (d)6 (providing maximum terms of one and one-half years of initial confinement and two years of extended supervision for a Class I felony); 939.51(3)(a) (providing maximum imprisonment of nine months for a Class A misdemeanor); 939.62(1) (increasing the maximum terms of imprisonment for the crimes by six, four, and two years, respectively, because the defendant is a repeater).

The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the circuit court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶ 81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Accordingly,

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

IT IS FURTHER ORDERED that Attorney Mark Schoenfeldt is relieved of any further representation of Daniel Helgeson in this matter pursuant to 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