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DISTRICT I

June 26, 2019

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

2017AP583-CRNM State of Wisconsin v. Natrone Anthony (L.C. # 2015CF2155)

Before Brash, P.J., Kessler and Dugan, 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).

Natrone Anthony appeals a judgment convicting him after a jury trial of multiple felony and misdemeanor charges: one count of stalking, resulting in bodily harm; one count of substantial battery; one count of battery to an injunction petitioner; one count of possession of an electric weapon; one count of disorderly conduct; three counts of knowingly violating a domestic abuse order; one count of resisting an officer; and three counts of bail jumping. Most of the

crimes were charged as acts of domestic abuse. *See* WIS. STAT. § 973.055(1) (2017-18).[1] Attorney Donna Odrzywolski, who was appointed to represent Anthony, filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738, 744 (1967). Anthony responded to the no-merit report. After considering the no-merit report and the response, and after conducting an independent review of the record, we conclude that there are no issues of arguable merit that Anthony could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether there would be arguable merit to a claim that the evidence was insufficient to support the verdict. When reviewing the sufficiency of the evidence, we look at whether "'the evidence, viewed most favorably to the [S]tate 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.'" *See* ***State v. Zimmerman***, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (citation omitted). "'If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn [the] verdict.'" ***Id.*** (citation omitted).

The testimony and other evidence presented at trial are accurately summarized in the no-merit report. Based on our thorough review of the trial transcripts, and viewing the evidence in the light most favorable to the jury's verdicts, we conclude that there was sufficient evidence for

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

the jury to find Anthony guilty of the charges.[2] There would be no arguable merit to a claim that there was insufficient evidence presented at trial to support the verdicts.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion. The circuit court sentenced Anthony to an aggregate term of fourteen years of imprisonment, consisting of seven years of initial confinement and seven years of extended supervision. The court considered appropriate factors in deciding what sentence to impose and explained its application of the various sentencing criteria to the facts of this case in accordance with the framework set forth in ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. There would be no arguable merit to an appellate challenge to the sentence.

In his response, Anthony argues that he should not have been charged with substantial battery for his actions on July 18, 2014, because he was previously charged with crimes for that incident. The Fifth Amendment to the United States Constitution and article I, section 8 of the Wisconsin Constitution both "protect a criminal defendant against being twice placed in jeopardy for the same offense." *See* ***State v. Warren***, 229 Wis. 2d 172, 179 n.2, 599 N.W.2d 431 (Ct. App. 1999). "The Double Jeopardy Clause is intended to provide three protections: protection against a second prosecution for the same offense after acquittal; protection against a second prosecution for the same offense after conviction; and protection against multiple punishments for the same offense." ***State v. Sauceda***, 168 Wis. 2d 486, 492, 485 N.W.2d 1 (1992). The prior

[2] The jury convicted Anthony of twelve charges and acquitted him of eight charges. He was acquitted of two counts of knowingly violating a domestic abuse order, one count of disorderly conduct, one count of criminal damage to property, three counts of bail jumping, and one count of theft.

case was dismissed without prejudice before trial; that is, before either acquittal or conviction. Therefore, the State was not prohibited from again bringing charges against Anthony based on the July 18, 2014 assault. There would be no arguable merit to this claim.

Anthony also argues in his response that he should not have been charged with both stalking and substantial battery because the dates he committed the crimes overlap. The information alleged that Anthony engaged in stalking from Friday, July 18, 2014, until May 9, 2015. The information also alleged that Anthony committed substantial battery on July 18, 2014.

Charges are not multiplicitous under the Double Jeopardy Clause unless they "are identical in law and fact." *See* ***Warren***, 229 Wis. 2d at 178-79. Anthony was properly charged with both stalking and substantial battery even though they both were alleged to have occurred on July 18, 2014, because the crimes are not identical in law and fact. *See* ***id.*** Therefore, there was no double jeopardy violation. Moreover, Anthony's argument that he received ineffective assistance of trial counsel because his attorney failed to raise these double jeopardy arguments is unavailing because the arguments have no merit. *See* ***State v. Golden***, 185 Wis. 2d 763, 771, 519 N.W.2d 659 (Ct. App. 1994) (counsel did not render ineffective assistance by failing to raise an issue that is meritless). There would be no arguable merit to these claims.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Donna Odrzywolski from further representation of Anthony.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Donna Odrzywolski is relieved of any further representation of Anthony 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