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DISTRICT II

August 7, 2019

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

2018AP739-CRNM State of Wisconsin v. Timothy A. Hill (L.C. #2017CF13)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

Timothy A. Hill appeals from a judgment convicting him after a jury trial of physical abuse of a child—intentionally cause bodily harm. His appointed appellate counsel, Diane Lowe, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v.*

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

California, 386 U.S. 738 (1967). Hill was advised of his right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment, as we discern no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

While on supervision with a no-alcohol provision, Hill came home intoxicated, argued with and berated his sixteen-year-old son for allegedly damaging a tool, then repeatedly punched the boy in the stomach with a closed fist, knocking the wind out of him. The boy reported the incident to school officials the next day.

The jury heard testimony from the owner of the tavern where Hill had been drinking, Hill's brother, who was present when the argument began, the Child Protective Social Services social worker to whom the school referred the boy, the City of Chilton Police Department captain who met with the boy the day after the boy reported the incident, and the boy himself. The jury found Hill guilty. The court sentenced him to two years' initial confinement and two years' extended supervision. This no-merit appeal followed.

The no-merit report addresses whether (1) there was sufficient evidence for the jury to find that Hill had engaged in an act of physical abuse of a child, intentionally causing bodily harm and (2) the sentence was illegal, the result of an erroneous exercise of discretion, or otherwise improper. As our review of the record satisfies us that the no-merit report properly analyzes these issues as without merit, we address them no further, with one exception in regard to Hill's sentence.

Postconviction, Hill wrote to the trial court questioning the \$250 DNA surcharge, as he had provided and paid for a sample three years earlier. The DNA surcharge is part of a

defendant's sentence. *State v. Nickel*, 2010 WI App 161, ¶6, 330 Wis. 2d 750, 794 N.W.2d 765. The court correctly and promptly advised Hill by letter that it was obliged pursuant to WIS. STAT. § 973.046(1r) to impose the surcharge.

It is not clear from the no-merit report if appellate counsel considered these further matters: the timeliness of the preliminary hearing, voir dire, evidentiary rulings, the court's colloquy with Hill regarding his decision to waive his right to testify, counsels' opening statements and closing arguments, and the jury instructions. Counsel must conduct a "conscientious examination" of the record for possible grounds for appeal, *see Anders*, 386 U.S. at 744, and show why each lacks arguable merit, *see* WIS. STAT. RULE 809.32(1)(a). Our independent review of the record satisfies us, however, that no meritorious challenge could be made to any of them.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Hill further in this appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Diane Lowe is relieved from further representing Hill in this appeal. *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