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DISTRICT IV

October 9, 2019

To:

Hon. J. David Rice
Reserve Judge

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

2017AP664-CRNM State of Wisconsin v. Daniel Patrick Pickett (L.C. # 2014CF14)

Before Fitzpatrick, P.J., Kloppenburg and Nashold, 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).

Daniel Pickett appeals related judgments convicting him of attempted first-degree intentional homicide, attempted kidnapping, first-degree recklessly endangering safety, intimidation of a victim by use of force, strangulation and suffocation, hit and run, battery, disorderly conduct, six counts of taking and driving a vehicle without the owner's consent, and three counts of theft, all as a repeater. Attorney David Karpe has filed a no-merit report seeking

to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18);¹ *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses the sufficiency of the evidence, whether counsel should have raised a defense of mental disease or defect (NGI), whether the judge’s questioning of a State’s witness violated the principle of judicial neutrality so as to deprive Pickett of a fair trial, whether the charges were properly joined for trial or should have been severed, whether trial counsel should have sought to suppress Pickett’s statement to police or pursued an NGI plea, and the validity of the sentences. Pickett was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we have reviewed the trial transcripts and are satisfied that the evidence was sufficient to prove each of the charged offenses. *See generally State v. Zimmerman*, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (discussing standard for sufficiency of the evidence). In particular, Pickett gave a statement to police in which he admitted to a series of vehicle thefts in the Tomah area committed over a period of about three weeks, explaining when and where he had gotten each vehicle, where he had driven it, and where he had abandoned it. While driving one of the stolen cars, Pickett forced another woman’s car off the road as he was attempting to pass her. Pickett said that he then beat the woman up by choking her and kicking her in the face a couple of times, and “was gonna to take her so I could kill her or whatnot so I didn’t go back to jail for a stolen car,” but the woman broke free and got away before he could get her in the trunk of the car. Pickett’s statement was corroborated by the victim’s account, as well as by Pickett’s DNA and fingerprints on items found in some of the recovered vehicles.

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

The parties stipulated that none of the vehicle owners had consented to having their vehicles taken or any of the contents therein stolen.

Next, for the reasons discussed in the no-merit report, we agree with counsel's analysis that it would be frivolous for Pickett to raise a claim challenging joinder, counsel's failure to pursue an NGI plea or suppression motion, the court's questioning of a witness, or the sentences. We further note that it would be frivolous to challenge the use of WIS JI-CRIMINAL 140 in light of the Wisconsin Supreme Court's decision in *State v. Trammell*, 2019 WI 59, 387 Wis. 2d 156, 928 N.W.2d 564. Our review of the record discloses no other basis for overturning the judgments of conviction, particularly in light of the overwhelming evidence described above. 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 judgments of conviction are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney David Karpe is relieved of any further representation of Daniel Pickett 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