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November 5, 2019

To:

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

2018AP1355-CRNM State of Wisconsin v. Dawhan M. Walton (L. C. No. 2015CF124)

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 Dawhan Walton filed a no-merit report concluding no grounds exist to challenge Walton's conviction for assault by a prisoner, contrary to WIS. STAT. § 946.43(2m)(a) (2017-18).¹ Walton was informed of his right to file a response to the no-merit report and has

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

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.

The State charged Walton with assault by a prisoner, as a repeater, arising from allegations that he spit on a corrections officer. At the outset of the criminal proceedings, the court granted defense counsel's request for a competency examination. Consistent with the examining psychologist's opinion, the court found Walton competent to proceed. In exchange for Walton's no-contest plea to the crime charged without the repeater enhancer, the State agreed to recommend a consecutive two-year sentence consisting of one year of initial confinement and one year of extended supervision. The defense remained free to argue the appropriate sentence. Out of a maximum possible sentence of three and one-half years, the circuit court imposed a two-year sentence consistent with the State's recommendation.

Although the no-merit report does not address it, we conclude there is no arguable merit to challenge the circuit court's competency determination. "No person who lacks substantial mental capacity to understand the proceedings or assist in his or her defense may be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures." WIS. STAT. § 973.13(1). To determine legal competency, the court considers a defendant's present mental capacity to understand and assist at the time of the proceedings. *State v. Byrge*, 2000 WI 101, ¶31, 237 Wis. 2d 197, 614 N.W.2d 477. "Competency to stand trial constitutes a judicial inquiry, not a medical determination." *Id.* A circuit court's competency determination should be reversed only when clearly erroneous. *Id.*, ¶45.

Here, the examining psychologist's report was filed on September 30, 2015, but the competency hearing was not held until April 13, 2017. The record suggests that the delay arose, in part, from Walton's failure to return necessary documentation to the State Public Defender and his refusal to communicate with his appointed attorney. At the competency hearing, defense counsel argued it was inappropriate to make a competency determination based on the 2015 report and the psychologist's testimony therefrom. The age of the report, however, went to its weight, not its admissibility. *See generally State v. Jones*, 2018 WI 44, ¶31, 381 Wis. 2d 284, 911 N.W.2d 97. Further, apart from Walton's own claim of incompetency, there was no evidence to undermine the psychologist's opinion. The record therefore supports the circuit court's determination.

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

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 Dawhan Walton 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