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DISTRICT IV

November 25, 2019

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

2017AP1861-CRNM State v. Haron A. Joyner (L.C. # 2016CF167)

Before Fitzpatrick, P.J., Blanchard and Graham, J.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).

Haron Joyner appeals a judgment of conviction for one count of first-degree intentional homicide. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),[1] and ***Anders v. California***, 386 U.S. 738 (1967). The no-merit report discusses the

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

sufficiency of the evidence to support the jury verdict, whether the sentence imposed was excessive, and whether there would be any arguable merit to a claim for ineffective assistance of counsel. Joyner was provided a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.[2]

The no-merit report addresses whether the evidence was sufficient to support the jury verdict. A claim of insufficiency of the evidence requires a showing that "the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). In order for the jury to find Joyner guilty of first-degree intentional homicide contrary to WIS. STAT. § 940.01(1)(a), the State needed to prove beyond a reasonable doubt that Joyner caused the death of the victim and that Joyner acted with the intent to kill. *See* WIS JI—CRIMINAL 1018.

Joyner was charged with the homicide of his wife, J.J. At trial, the State offered testimony from several law enforcement officers who were involved in Joyner's arrest and the

[2] This court previously placed this appeal on hold because the Wisconsin Supreme Court granted a petition for review in ***State v. Trammell***, 2017AP1206-CR, unpublished slip op. (WI App May 8, 2018). The order noted that here, at trial, jury instruction WIS JI—CRIMINAL 140 was given to the jury, and that the supreme court granted review in ***Trammell*** to address whether the holding in ***State v. Avila***, 192 Wis. 2d 870, 535 N.W.2d 440 (1995)—that it is "not reasonably likely" that WIS JI—CRIMINAL 140 reduces the State's burden of proof—is good law; or should ***Avila*** be overruled on the ground that it stands rebutted by empirical evidence. The supreme court has now issued a decision in ***Trammell***, holding "that WIS JI—CRIMINAL 140 does not unconstitutionally reduce the State's burden of proof below the reasonable doubt standard." ***State v. Trammell***, 2019 WI 59, ¶67, 387 Wis. 2d 156, 928 N.W.2d 564.

investigation of J.J.'s death. One officer who was dispatched to the crime scene on the night of the incident testified that he entered the apartment building and observed "red spatter" in the common hallway. He followed the sound of voices to an upstairs apartment, where he observed the victim lying unresponsive on her back in a pool of blood, surrounded by children who were screaming.

A second responding officer testified regarding a video that was taken by the victim with her cell phone during the attack and shown to the jury at trial. The video depicts Joyner walking toward J.J. in the kitchen, and a child in the background. The video then focuses on J.J.'s clothing and becomes shaky. J.J. can be heard saying something about calling the police. Joyner can be heard swearing, and then there is the sound of an impact and a scream.

The State also offered the testimony of a third officer who likewise was dispatched to the scene of the crime. The officer testified that he recovered a knife from the stairwell of the apartment building, and also testified about pictures depicting the knife as well as the knife itself, all of which were shown to the jury. He also testified regarding a report obtained from the state crime lab, which the parties stipulated was admissible. The report stated that a female STR DNA profile was detected from the swabbing of stains on the blade of the knife, and the report also concluded that J.J. was the source of the DNA obtained from the knife. The jury also heard testimony from the medical examiner, who testified regarding numerous stab wounds on J.J.'s body that led to her death.

A fourth officer testified regarding his investigation of J.J.'s death. The officer testified that, in executing a search warrant on the Joyner residence, he found documents relating to divorce. The documents appear to be partially filled out, and bear J.J.'s signature without a date.

The jury viewed a videotaped forensic interview of J.J.'s daughter, K.H., who was ten years old at the time of the incident. K.H. stated during her interview that there were five children present at the apartment when her mother was stabbed. The children included K.H.'s sibling and two stepsiblings, plus a five-year-old cousin. K.H. stated that Joyner and J.J. had been fighting and that Joyner took a knife and stabbed it into J.J.'s neck. K.H. stated that her mother went to the neighbor's apartment after being stabbed, banged on the door, and fell to the ground when the door opened. When K.H. was cross-examined at trial, she testified that she did not actually see Joyner grab a knife.

The jury also heard testimony from Joyner's son, A.J., and viewed his videotaped forensic interview. A.J. was twelve years old at the time of the incident. He also stated in his interview that his parents had been arguing. A.J. stated that he saw his dad stab his stepmother. At trial, A.J. testified on cross-examination that his view of the attack was partially blocked because one of the other children was in the way.

The State also offered testimony from the neighbor across the hall, who let J.J. into her apartment on the night of the incident, after hearing a banging on the door and a woman screaming. The neighbor testified that J.J. was "bleeding out" and that the children who had followed after J.J. also were covered in blood. The State also offered the testimony of the neighbor's daughter, who stated that she grabbed her phone to call 911, but saw Joyner standing in the doorway. The daughter testified that she heard Joyner say something to the effect of "I just couldn't take it anymore" before he walked away.

Upon our review of all the evidence in the record, including but not limited to the evidence discussed above, we agree with counsel that any challenge to the sufficiency of the evidence to support the jury's verdict would be without arguable merit.

In addition, any challenge to Joyner's waiver of his right to testify would lack arguable merit. "[A] criminal defendant's constitutional right to testify on his or her behalf is a fundamental right." ***State v. Weed***, 2003 WI 85, ¶39, 263 Wis. 2d 434, 666 N.W. 2d 485. The circuit court must therefore conduct an on-the-record colloquy with a criminal defendant to ensure that: (1) the defendant is aware of his or her right to testify; and (2) the defendant has discussed this right with his or her counsel. ***Id.***, ¶43. Here, the court engaged Joyner in an on-the-record colloquy, informing him of both his right to testify and his right to not testify. After indicating that he had sufficient time to confer with his counsel and think about the decision of whether to testify, Joyner confirmed that he was waiving his right to testify. We are not aware of any facts suggesting that there would be arguable merit to challenging this waiver.

The no-merit report also addresses whether there would be any arguable merit to a claim that Joyner's sentence was excessive. Our review of a sentence determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). First-degree intentional homicide is a Class A felony that carries a life sentence. *See* WIS. STAT. §§ 939.50(3)(a) and 940.01(1)(a). The State recommended that Joyner never be eligible for any kind of release, and Joyner's counsel recommended that he be eligible for extended supervision after twenty years. The court imposed a life sentence, but determined that Joyner would be eligible to apply for extended supervision after forty years.

In making its sentencing determination, the court considered the standard sentencing factors. *See generally* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Regarding the severity of the offense, the court stated that there was "no question about the gravity of this offense," which had resulted in the death of a human being. With respect to Joyner's character, the court acknowledged that Joyner did not have an extensive criminal history, but noted that he had engaged in a pattern of domestic abuse. The court also weighed the "ripple effect" that Joyner's action had on the victim's family, his own family, and the community. We are satisfied that, under the circumstances, the sentence imposed here was not "'so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.'" ***State v. Grindemann***, 2002 WI App 106, ¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507 (quoted sources omitted). Accordingly, we agree with counsel's assessment that there would be no arguable merit to challenging Joyner's sentence on appeal.

Finally, the no-merit report concludes that there would be no arguable merit to any claim of ineffective assistance of trial counsel. *See* ***Strickland v. Washington***, 466 U.S. 668, 687-694 (1984) (claim of ineffective assistance of counsel must show that counsel's performance was deficient and that the deficiency prejudiced the defense). On our own review, we agree that there are no facts before us that would support a non-frivolous claim of ineffective assistance of counsel.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of any further representation of Haron Joyner 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