



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV/I

January 13, 2020

To:

Hon. Richard T. Werner
Rock County Courthouse
51 S. Main St.
Janesville, WI 53545

Gerald A. Urbik
Assistant District Attorney
51 S. Main St.
Janesville, WI 53545

Jacki Gackstatter
Rock County Courthouse
51 S. Main St.
Janesville, WI 53545

Charles Anthony Bell 131281
Wisconsin Secure Program Facility
P.O. Box 1000
Boscobel, WI 53805-1000

Suzanne Edwards
Law Office of Suzanne Edwards
P.O. Box 70
Dodgeville, WI 53533-0070

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

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

2017AP705-CRNM State of Wisconsin v. Charles Anthony Bell (L.C. # 2015CF498)

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).

Charles Anthony Bell appeals a judgment convicting him after a jury trial of one count of manufacturing or delivering cocaine, as a party to a crime and as a second or subsequent offense. Appointed appellate counsel, Attorney Suzanne Edwards, filed a no-merit report seeking to withdraw as appellate counsel. *See* 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, 744 (1967). Bell has filed several responses to the no-merit report. After considering the no-merit report and the responses, and after conducting an independent review of the record, we conclude that there are no issues of arguable merit that Bell could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report addresses whether Bell’s conviction was supported by the evidence. 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.” *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).

At the one-day jury trial, two persons directly involved in the controlled drug sale testified that Bell sold cocaine to another person, which was delivered by a courier. An expert from the State Crime Lab testified that the substance seized by the police after the sale was cocaine. Two police officers testified about their roles in setting up the sale and gathering evidence, including audio recordings and text messages that implicated Bell. Based on our review of the trial transcript and other evidence, we conclude that there was sufficient evidence presented at the one-day trial for the jury to find Bell guilty of the charge. There would be no arguable merit to a claim that there was insufficient evidence presented at trial to support the verdict.

The no-merit report next addresses whether there would be arguable merit to an appellate challenge to the sentence imposed on Bell. The circuit court sentenced Bell to an aggregate term of eleven years of imprisonment, consisting of six years of initial confinement and five years of extended supervision. The State requested a fourteen-year sentence, which was the maximum term of incarceration. Conversely, the defense asked the circuit court to withhold sentence and place Bell on probation for three years. The circuit court considered appropriate sentencing objectives and explained that the sentence it imposed was based on various sentencing criteria applied to the facts of this case. *See State v. Brown*, 2006 WI 131, ¶26, 298 Wis. 2d 37, 725 N.W.2d 262. Because the circuit court properly exercised its discretion, there would be no arguable merit to an appellate challenge to the sentence.

The no-merit report further addresses whether Bell was denied the effective assistance of trial counsel. A defendant receives constitutionally ineffective assistance of counsel if his counsel performs deficiently and counsel's deficient performance prejudices the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We agree with the no-merit report's conclusion that the record reveals no errors by trial counsel. Counsel thoroughly cross-examined the witnesses, made appropriate objections, and effectively advocated on behalf of Bell. In Bell's response, he argues that his trial counsel should have raised various issues like prosecutorial misconduct and the State's failure to produce a warrant. None of these issues would have been successful had they been raised. Trial counsel did not render ineffective assistance by failing to raise issues that are meritless. *See State v. Golden*, 185 Wis. 2d 763, 771, 519 N.W.2d 659 (Ct. App. 1994). There would be no arguable merit to a claim that Bell received ineffective assistance of trial counsel.

In his response, Bell argues that the prosecutor improperly vouched for the truthfulness of one of the State's witnesses. *See* WIS. STAT. § 904.04(1) (“Evidence of a person’s character or a trait of the person’s character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion[.]”). Bell points to the fact that the prosecutor explained to the jury during opening argument that the State entered into an agreement with one of the witnesses to reduce pending criminal charges in exchange for truthful trial testimony against Bell. Bell’s argument is unavailing. The prosecutor was explaining to the jury the terms of the agreement, not arguing that the prosecutor knew the witness to be truthful. There would be no arguable merit to a claim that the prosecutor improperly vouched for the truthfulness of one of the State’s witnesses.

Bell next argues in his response that his constitutional rights were violated when the prosecutor elicited answers from a State witness that constituted “other acts” evidence. “[E]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith.” WIS. STAT. § 904.04(2)(a). The prosecutor asked one of the State witnesses why his long-term friendship with Bell ended. The witness responded that the friendship ended because his baby daughter was born addicted to heroin because Bell sold heroin to the child’s mother, the witness’s former girlfriend. When the witness provided this information in answer to a question from the State, Bell’s counsel immediately objected. The circuit court sustained the objection and struck the answer, telling the jury to disregard the information. Jurors are presumed to have followed the circuit court’s instructions. *See State v. LaCount*, 2008 WI 59, ¶23, 310 Wis. 2d 85, 750 N.W.2d 780. Therefore, there would be no arguable merit to this claim on appeal.

Bell next argues in his response that his trial counsel should have moved to adjourn the trial when trial counsel saw that there were no African Americans in the potential jury panel. After the jury was selected, Bell's counsel notified the circuit court that Bell, who is African American, objected to the fact that the jury did not have any African American jurors. The circuit court noted Bell's objection, but said that there was nothing to suggest that the jury had been chosen in a biased manner. "[I]n order to make a successful challenge to the composition of a ... jury, a defendant must prove 'purposeful discrimination.'" *State v. Gregory*, 2001 WI App 107, ¶7, 244 Wis. 2d 65, 630 N.W.2d 711, citing *Batson v. Kentucky*, 476 U.S. 79, 93 (1986). There is nothing in the record to suggest that there was a biased procedure that resulted in a potential jury panel that had no African Americans. There would be no arguable merit to this claim.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Bell has filed several motions for immediate release and other relief while this no-merit appeal has been pending. We deny the motions. We affirm the judgment and relieve Attorney Suzanne Edwards of further representation of Bell.

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 Suzanne Edwards is relieved of any further representation of Bell 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