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DISTRICT II

February 5, 2020

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

2019AP1107-CRNM State of Wisconsin v. Trevean M. McClinton (L.C. #2016CF311)

Before Reilly, P.J., Gundrum and Davis, 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).

Trevean M. McClinton appeals from a judgment of conviction for possession of cocaine with intent to deliver as a second or subsequent offense and as a repeater. His appellate counsel 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). Upon consideration of the report, McClinton's response, and an independent review of the record, the judgment is summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Marijuana was found in McClinton's pocket during a pat down during a traffic stop. Crack cocaine was also found. A search of McClinton's car revealed another baggie of cocaine and a gun in the center console. McClinton was charged with possession of marijuana as a second or subsequent offense, two counts of possession of cocaine with intent to deliver as a second or subsequent offense, felon in possession of a firearm, and carrying a concealed weapon. McClinton was charged as a repeat offender on all the counts.

McClinton filed a motion to suppress evidence on the ground that there was no basis for the officer to stop his vehicle. At issue was whether the license plate lights on the vehicle were working or not and whether McClinton's vehicle deviated from its lane in violation of WIS. STAT. § 346.13(3). Although the vehicle owner testified that the plate lights were working when she retrieved the vehicle after McClinton's arrest, the circuit court found the officer's testimony that he observed the plate lights to not be working to be credible and ultimately found that the inoperable lights supported the traffic stop. It also found that McClinton's vehicle deviated over the center line dividing the two lanes of northbound traffic and that the deviation, no matter how slight, was a violation of § 346.13(3) and provided a basis for the stop. McClinton's suppression motion was denied. A motion for reconsideration was also denied.

McClinton entered a guilty plea to possession of cocaine with intent to deliver as a second or subsequent offense and as a repeater. The other charges were dismissed as read-ins at sentencing. The prosecution promised to recommend a prison sentence with no more than seven

years of initial confinement and to not take a position as to whether the sentence should be concurrent or consecutive to a sentence McClinton was serving after the revocation of probation. McClinton was sentenced to seven years of initial confinement and eight years of extended supervision to be served consecutive to the sentence he was already serving.[2] McClinton was made eligible for the Substance Abuse Program and Challenge Incarceration Program.

The no-merit report addresses the potential issues of whether the circuit court erred in denying McClinton's suppression motion,[3] whether McClinton's plea was knowingly, voluntarily, and intelligently entered, and whether the sentence was the result of an erroneous exercise of discretion, unduly harsh or excessive, based on inaccurate information, or otherwise subject to modification based on a new factor. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further.

McClinton's response focuses on the ruling on the suppression motion. He claims that the circuit court's finding that his car crossed over the center line dividing the two lanes of northbound traffic was "in clear error." He suggests that because the circuit court first indicated it did not observe a lane deviation after its first viewing of the squad car video, that the court was unduly influenced by the prosecutor's efforts to pinpoint the video times that a deviation occurred. The prosecutor's further argument as to where the deviations occurred was not

[2] A postconviction motion for twenty-two days of sentence credit was granted.

[3] The no-merit report concludes that it is arguable that the circuit court's finding that the license plate lights were not working is clearly erroneous. The report further explains that because the suppression ruling was based on the alternative ground that the vehicle deviated over the lane line, there is no arguable merit to a challenge to the suppression ruling.

improper. Also, the circuit court indicated that when first viewing the squad car video it was looking for a deviation over the yellow lane line separating north and southbound traffic. When refocused to consider lane deviations between the two northbound lanes, the circuit court saw at least one deviation. Under either a de novo or clearly erroneous standard of review, there is no arguable merit to a claim that the circuit court's finding that a deviation occurred should be reversed.[4]

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 McClinton further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Leon W. Todd is relieved from further representing Trevean M. McClinton in this appeal. *See* WIS. STAT. RULE 809.32(3).

[4] The circuit court did not hear testimony about the lane deviations and relied on its viewing of the squad car video. As the no-merit report observes, the standard of review for the circuit court's factual finding based on its observation of the video is not settled. *See* ***State v. Reed***, 2018 WI 109, ¶51 n.22, 384 Wis. 2d 469, 920 N.W.2d 56 (observing that the parties disagreed whether to apply the clearly erroneous standard or the de novo standard to the circuit court's findings of fact based solely on body camera footage); ***State v. Jimmie R.R.***, 2000 WI App 5, ¶39, 232 Wis. 2d 138, 606 N.W.2d 196 (1999) (reasoning that because the only evidence on the relevant question of fact was the videotape itself, which was in the appellate record, the appellate court was in as good a position as the circuit court to make the determination).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals