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DISTRICT IV

April 30, 2020

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

2018AP814-CRNM State of Wisconsin v. Darrell LaQuinn Logan
(L.C. #2013CF1788)

Before Blanchard, Kloppenburg, and Graham, 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).

Attorney Michael Herbert, appointed counsel for Darrell Logan, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)[1] and ***Anders v. California***, 386 U.S. 738 (1967).

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

Logan 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]

After a jury trial, Logan was convicted, as a party to a crime, of three felony counts: substantial battery, attempting to elude an officer, and second-degree recklessly endangering safety. Logan also was convicted of one count of obstructing an officer and one count of disorderly conduct, both misdemeanors. He was sentenced to five years of initial confinement and five years of extended supervision on the reckless endangerment count, eighteen months of initial confinement and two years of extended supervision on the substantial battery count, and a one-year jail sentence on the eluding an officer count, all to run concurrently. The court imposed ninety days of jail time on the disorderly conduct count and nine months of jail time on the obstruction count, to run concurrent to each other and to all other sentences.

We first address whether the evidence at trial was sufficient to support the convictions. This court will affirm the verdict unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Credibility of witnesses is for the trier of fact. ***Id.*** at 504. Without attempting to

[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, 532 N.W.2d 423 (1995)—that it is "not reasonably likely" that WIS JI-CRIMINAL 140 reduces the State's burden of proof—is good law; or whether ***Avila*** should 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.

review the evidence in detail here, we are satisfied that the testimony of the multiple witnesses called by the State was sufficient to support the convictions. The testimony was not inherently incredible and, if believed by the jury, was sufficient to meet all the elements of all the charges. There would be no arguable merit to challenging the sufficiency of the evidence on appeal.

We turn next to the issue of whether the circuit court erred in denying Logan's request for a continuance. Defense counsel requested a continuance as trial was about to begin, stating that Logan believed that he and his defense counsel had not spent enough time together to prepare for trial. The court then questioned defense counsel about his representation of Logan and his preparation for trial. In response to questioning, defense counsel stated that he had been assigned Logan's case about sixty days prior to trial. When asked whether he was familiar enough with the case to proceed, defense counsel stated, "Your Honor, as an officer of the court, I feel I'm obligated to tell the Court that I'm prepared to go." The court denied the motion, noting that the case had been pending since 2013. The trial commenced in May 2017. The court further noted that Logan had "changed lawyers a couple of times" based on representations that he could not get along with them. We are satisfied, based upon our independent review of the record, that the court's denial of a continuance was within the proper exercise of its discretion, such that any argument to the contrary would be without arguable merit. *See* ***State v. Wollman***, 86 Wis. 2d 459, 468, 273 N.W.2d 225 (1979) ("The decision to grant or deny a continuance is a matter within the discretion of the trial court.").

In addition, the no-merit report concludes that there would be no arguable merit to an argument that the circuit court erred in permitting the State to amend the criminal information on the day of trial to include party to a crime liability. We agree. Under WIS. STAT. § 971.29(2), the information may be amended at trial when the amendment does not prejudice the defendant. Here,

Logan's trial counsel did not object to the amendment, stating that he had been preparing for trial as if the amended information had already been filed. There is nothing in the no-merit report or in the record to suggest that Logan suffered prejudice as a result of the amendment to the information at the start of trial. The issue is without arguable merit.

Finally, the no-merit report addresses whether there would be any arguable merit to a claim that the circuit court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

Upon an independent review of the record, this court has found no other arguable basis for reversing the judgment of conviction. 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 Michael Herbert is relieved of any further representation of Darrell Logan 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