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May 19, 2020

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

2018AP1261-NM State of Wisconsin v. Clint Antoine Rhymes
(L.C. # 2005CI11)

Before Dugan, Donald and White, 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).

Clint Rhymes appeals an order revoking his supervised release from a commitment under WIS. STAT. ch. 980 (2017-18).¹ Attorney Dennis Schertz filed a no-merit report seeking to

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

withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738, 744 (1967). Rhymes was advised of his right to respond, but he has not done so. After considering the no-merit report and conducting an independent review of the record, we conclude that there are no issues of arguable merit that Rhymes could raise on appeal. Therefore, we affirm. *See* WIS. STAT. RULE 809.21.

On March 18, 2008, the circuit court entered a judgment and commitment order finding Rhymes to be a sexually violent person under WIS. STAT. Ch. 980. On February 25, 2016, the circuit court granted Rhymes supervised release. The Department of Health Services petitioned to revoke Rhymes' release on April 12, 2017, alleging that he violated several rules of his release. Hearings were held on the petition on May 11, 2017 and July 17, 2017. On July 18, 2017, the circuit court then revoked Rhymes' supervised release.

The no-merit report first addresses whether the circuit court erred when it revoked Rhymes' supervised release. "A person on supervised release is subject to the conditions set by the court and to the rules of the department." WIS. STAT. § 980.08(6m). The circuit court may revoke supervised release if the State proves by clear and convincing evidence that the person has violated any condition or rule of release. WIS. STAT. § 980.08(8(a)).² The circuit court *shall* revoke supervised release if the State proves by clear and convincing evidence that the safety of others requires that supervised release be revoked.

At the hearing on May 11, 2017, Rhymes' former roommate, Robert McGee, testified that he reported to a supervised release specialist that Rhymes had violated the rules of his release by

² This statute was amended on March 4, 2020. We refer to the current version of the statute. The amendment is not relevant to our analysis.

possessing a cell phone on several occasions. Two other witnesses also testified about their interactions with Rhymes and their opinions that he had violated the rules of his release. Rhymes testified, admitting that he used a cell phone a few times and explaining to the court the circumstances.

At the hearing on July 17, 2017, the court heard testimony about a new allegations against Rhymes. McGee testified that on his way out of the courtroom at the last hearing, Rhymes threatened him, saying, "I'm going to get you." McGee testified that he was frightened and contemporaneously informed the person driving home from the court house what had occurred. McGee further testified that he had concerns for his personal safety if Rhymes were to return to the house in which they had both been residing together. On cross-examination, McGee testified that he had not actually heard Rhymes say "I'm going to get you," but instead had read his lips. In contrast, Rhymes testified that he had said, "[H]ey McGee."

The circuit court found McGee to be more credible than Rhymes with regard to the statement Rhymes made to McGee after the May 11, 2017 hearing. The circuit court concluded that the State had proven that McGee violated the rules of his probation by clear and convincing evidence. The circuit court also concluded that the safety of others required the revocation of Rhymes' supervised release. The circuit court's decision is well supported by the testimony at the hearings. Therefore, there would be no arguable merit to an argument that the circuit court erred when it revoked McGee's extended supervision.

The no-merit report addresses whether Rhymes received ineffective assistance of counsel. To prove a claim of ineffective assistance of counsel, a defendant must show that his lawyer performed deficiently and that this deficient performance prejudiced him. See *Strickland v.*

Washington, 466 U.S. 668, 687 (1984). The test for deficient performance is whether counsel’s representation “fell below an objective standard of reasonableness.” *State v. Carter*, 2010 WI 40, ¶22, 324 Wis. 2d 640, 782 N.W.2d 695. To show prejudice, “the defendant must show that ‘there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” *Id.*, ¶37 (citation omitted). A reviewing court may dispose of a claim of ineffective assistance of counsel on either ground. *Strickland*, 466 U.S. at 697.

We agree with the no-merit report’s analysis of this issue. Rhymes' counsel acted skillfully in pursuing Rhymes’ interests. He cross-examined State's witnesses and argued that Rhymes should not be revoked. However, Rhymes’ counsel could not convince the circuit court that Rhymes was more credible than his former roommate, who testified about the threats Rhymes made. There is nothing in the record that suggests Rhymes received ineffective assistance of counsel. Therefore, there would be no arguable merit to this issue.

Our independent review of the record reveals no arguable basis for reversing the order revoking Rhymes’ supervised release. Accordingly,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dennis Scherr is relieved of any further representation of Clint Rhymes 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