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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:

2018AP1143-CRNM State of Wisconsin v. Roger Curtis Woodruff
(L.C. # 2013CF5039)

Before Brash, P.J., Dugan 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).

Roger Curtis Woodruff appeals a judgment convicting him after a jury trial of one count of burglary and one count of misdemeanor criminal damage to property. He also appeals an order denying his postconviction motion. Appointed appellate counsel, Paul G. Bonneson, filed a no-

merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Woodruff was notified that a no-merit report had been filed and was given an opportunity 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 Woodruff could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report addresses whether there would be arguable merit to a claim that there was insufficient evidence to support Woodruff’s conviction. 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).

A defendant is guilty of burglary if the State proves beyond a reasonable doubt that: (1) the defendant intentionally entered a building; (2) the defendant did not have the consent of the person lawfully in possession of the building; (3) the defendant knew that they were entering without consent; and (4) the defendant entered the building with intent to steal. *See* WIS. JI-CRIMINAL 1421. A defendant is guilty of criminal damage to property if the State proves beyond a reasonable doubt that: (1) the defendant caused damage to physical property; (2) the property belonged to another person; (3) the defendant intentionally caused the damage; (4) the defendant caused the

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

damage without consent; and (5) the defendant knew that the property belonged to another and knew that the other person did not consent to the damage. *See* WIS. JI-CRIMINAL 1400.

L.M. testified that someone entered her locked garage by prying a board from the exterior wall of the garage. The person took her green and yellow Yardman snow blower. L.M. testified that these things were done without her consent. Police Officer Jason DeWitt testified that he saw Woodruff carrying or pulling a snow blower down the street several blocks from L.M.'s house, although Officer DeWitt was not yet aware of the burglary. Officer DeWitt testified that it was a cool night in October and there was no snow on the ground. He pulled his car over to ask Woodruff about the snow blower. Woodruff told Officer DeWitt that the snow blower belonged to him and he had just retrieved it from his brother-in-law's house because he was worried that his brother-in-law was going to sell it. Officer DeWitt identified a photo of the yellow and green Yardman snow blower that Woodruff was carrying. Officer DeWitt testified that he then learned that a snow blower may have been taken from a nearby location. Officer DeWitt testified that he arrested Woodruff on an outstanding warrant and found a standard claw hammer when he searched Woodruff incident to arrest. Based on our review of the trial testimony and other trial testimony, we conclude that there was sufficient evidence for the jury to find Woodruff guilty of the charges. 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 arguable merit to a claim that the circuit court erred when it denied Woodruff's motion asking that the DNA surcharges in this case be vacated. Woodruff argued that the surcharges were unconstitutional as applied to him because they were punitive, and thus a violation of the *ex post facto* clause of the United States Constitution. We conclude that the circuit court properly denied the motion because the Wisconsin Supreme

Court held in *State v. Williams*, 2018 WI 59, ¶¶42-43, 381 Wis. 2d 661, 912 N.W.2d 373, that the DNA surcharge statute did not have a punitive effect and, therefore, did not violate the *ex post facto* clause. There would be no arguable merit to this claim.

The no-merit report next addresses whether there would be arguable merit to an appellate challenge to Woodruff's sentence. The circuit court sentenced Woodruff to a total of three years of initial confinement and three years of extended supervision. The circuit court considered appropriate sentencing objectives and explained how the sentence it imposed was based on the various sentencing criteria as applied to the facts of this case. See *State v. Brown*, 2006 WI 131, ¶26, 298 Wis. 2d 37, 725 N.W.2d 262. In particular, the circuit court considered Woodruff's prior record of repeated burglaries to be aggravating. Because the circuit court properly exercised its sentencing discretion, there would be no arguable merit to an appellate challenge to the sentence.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction and order denying postconviction relief. Therefore, we affirm the judgment and order, and we relieve Attorney Paul G. Bonneson of further representing Woodruff.

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Paul G. Bonneson is relieved of any further representation of Woodruff. 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