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DISTRICT IV

August 27, 2020

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

2019AP1141-CRNM State of Wisconsin v. Mark A. London (L.C. # 2017CM157)

Before Fitzpatrick, P.J.¹

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 Vicki Zick, appointed counsel for Mark London, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 and *Anders v.*

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

California, 386 U.S. 738, 744 (1967). The no-merit report identifies the following potential issues: (1) sufficiency of the evidence to support the jury verdict; (2) sentencing errors; and (3) other errors before or during trial. London 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, I agree with counsel’s assessment that there are no arguably meritorious appellate issues. Accordingly, I affirm.

London was convicted, after a jury trial, of mistreating an animal. The court withheld sentence and placed London on probation for one year.

The no-merit report addresses whether the evidence was sufficient to support the conviction. I agree that there would be no arguable merit to a claim of insufficiency of the evidence. A claim of insufficiency of the evidence requires a showing that “the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). The evidence at trial, including testimony by the investigating officers and the veterinarian who treated the dogs, was sufficient to support the jury verdict.

The no-merit report addresses whether there would be arguable merit to further proceedings based on sentencing. I conclude that this issue lacks arguable merit. This court’s review of a sentence determination begins “with the presumption that the [circuit] court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of.” *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the court explained that it considered facts pertinent to the standard

sentencing factors and objectives, including London's character and criminal history, the seriousness of the offense, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The court withheld sentence and placed London on probation for one year. I discern no arguable merit to a challenge to the circuit court's sentencing decision.

Finally, the no-merit report addresses whether there would be arguable merit to further proceedings based on the circuit court's order denying London's pretrial motion to return the dogs; jury selection; opening and closing statements; or London's decision not to testify at trial. I agree that there are no issues of arguable merit based on the proceedings before or during trial.

Upon my independent review of the record, I have found no other arguable basis for reversing the judgment of conviction. I conclude that 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 affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Vicki Zick is relieved of any further representation of Mark London 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