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DISTRICT II

December 2, 2020

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

2018AP2022-CRNM State of Wisconsin v. Anthony M. Stanley (L.C.#2016CF146)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

Anthony M. Stanley appeals from a judgment convicting him of armed robbery as a party to a crime and of first-degree reckless injury with use of a dangerous weapon as a party to a crime. *See* WIS. STAT. §§ 943.32(2), 940.23(1)(a), 939.05, 939.63(1)(b) (2015-16).¹ His

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

appellate counsel, Angela Conrad Kachelski, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Stanley received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal.² See WIS. STAT. RULE 809.21.

The charges against Stanley stem from an incident that occurred in January 2016. As detailed in the complaint, police officers were dispatched to investigate a shooting. The victim had just parked his truck and had his grandson with him. Shortly thereafter, three individuals approached him and one of them called him by name. One of the men had a gun and pointed it at the victim. The victim then grabbed the gun and a fight ensued. The victim reported that two or three shots were fired. Meanwhile, another man hit the victim in the head, and the individuals took money and a cell phone from the victim's pockets.

The complaint alleged that the victim's injuries included gunshot wounds to both legs and three broken toes. The victim stated that he recognized the voice of one of the individuals as belonging to "Maine," a person he knew from the neighborhood. After viewing a photo array, the victim identified Stanley as the shooter in the incident with ninety percent certainty.

² Our review of this case was held in abeyance pending the Wisconsin Supreme Court's consideration of another defendant's appeal concerning jury instruction WIS JI—CRIMINAL 140, a modified version of which was also used at Stanley's trial. Based on the Wisconsin Supreme Court's resolution of that appeal, there would be no arguable merit to pursue postconviction proceedings based on the use of that jury instruction in this case. See *State v. Trammell*, 2019 WI 59, ¶67, 387 Wis. 2d 156, 928 N.W.2d 564.

Stanley went to trial, and a jury found him guilty of armed robbery as a party to a crime and of first-degree reckless injury with use of a dangerous weapon as a party to a crime. The trial court subsequently withheld sentence on count one and imposed a ten-year term of probation. On count two, the trial court sentenced Stanley to twelve years of initial confinement and five years of extended supervision.

This appeal follows. The no-merit report addresses, among other things, Stanley's initial appearance, preliminary hearing, pretrial motions, the sufficiency of the evidence to support the verdicts, and the trial court's exercise of its sentencing discretion. This court is satisfied that the no-merit report properly analyzes the issues it raises as being without merit and that no procedural trial errors occurred. In the discussion that follows, we briefly elaborate on Stanley's initial appearance and address jury selection.

A. Initial Appearance

At Stanley's initial appearance, which was held before a court commissioner, Stanley's attorney acknowledged receipt of the complaint, waived its reading, and advised: "The defendant is aware of the charges and penalties."³ The court then noted Stanley's request for a preliminary hearing and went on to consider bond.

As noted in her no-merit report, the court commissioner did not personally inform Stanley of the penalties he faced. *See* WIS. STAT. § 970.02(1)(a); *see also State v. Thompson*, 2012 WI 90, ¶62, 342 Wis. 2d 674, 818 N.W.2d 904 (setting forth mandatory duties under

³ The complaint properly identified the charges and the penalties, including the penalty for the dangerous weapon enhancer.

§ 970.02(1)(a), explaining: “In the case of a felony, the judge *shall* personally inform the defendant of the penalties for the felony or felonies with which the defendant is charged.”) (emphasis in *Thompson*). However, if Stanley pursued a challenge on this basis, there is no indication in the record that he could make the requisite showing of prejudice. *See Thompson*, 342 Wis. 2d 674, ¶11 (“The prejudice determination [in this scenario] must satisfy the traditional standard for overcoming harmless error, that is, there must be a reasonable probability that the error contributed to the outcome of the action or the proceeding at issue.”). There is no arguable merit to a challenge on this basis.

B. Jury Selection

On the last day of trial, outside the presence of the jury, Stanley’s trial counsel—at Stanley’s request—made it a point to note that there were no African-Americans on the jury. Stanley’s trial counsel acknowledged that he never raised a *Batson* challenge during jury selection “because there was not a systematic exclusion.” *See Batson v. Kentucky*, 476 U.S. 79, 89 (1986) (holding that the State may not use race as a basis for its peremptory challenges).

There is no arguable merit to a *Batson* challenge in this case. While the record identifies Stanley as African-American, it does not indicate the race of any jurors. Moreover, there is no indication in the record that the State used peremptory strikes to remove jurors from the venire on account of their race. Ultimately, the law guarantees only an impartial jury, not one of any particular racial composition. *See State v. Horton*, 151 Wis. 2d 250, 257-60, 445 N.W.2d 46 (Ct. App. 1989). There is no arguable merit to a challenge to the jury selection process.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Stanley further in this appeal.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Angela Conrad Kachelski is relieved of further representation of Anthony M. Stanley 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