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DISTRICT I

December 15, 2020

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

2019AP2018-CRNM State of Wisconsin v. James A. Thompson (L.C. # 2018CF5281)

Before Brash, P.J., 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).

James A. Thompson appeals a judgment of conviction entered upon his guilty plea to felonious intimidation of a witness as an act of domestic abuse. Appellate counsel, Attorney Leon W. Todd III, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2017-18).¹ Thompson did not file a response. Upon consideration

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

of the no-merit report and an independent review of the record as mandated by *Anders*, we conclude that no arguably meritorious issues exist for an appeal, and therefore we summarily affirm. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, Thompson was in the Milwaukee County Jail on September 4, 2018, facing a felony charge of strangulation and suffocation in Milwaukee County Circuit Court case No. 2018CF3299, when he placed a telephone call to L.S.C., the alleged victim and key witness in that case. During the call, which was recorded by the jail's inmate telephone recording system, Thompson described his plan that L.S.C. either testify at a pending hearing that she had lied about Thompson's actions, or that she not come to court. The complaint further alleged that when the pair began discussing L.S.C.'s pregnancy, Thompson stated that L.S.C. had been "staying with [Thompson]." The State charged Thompson with intimidation of a witness by a person charged with a felony, a Class G felony carrying maximum penalties of ten years of imprisonment and a \$25,000 fine. *See* WIS. STAT. §§ 940.43(7), 939.50(3)(g). The State further alleged that Thompson's crime was an act of domestic abuse that carried a \$100 domestic abuse surcharge. *See* WIS. STAT. § 973.055.

Thompson decided to resolve the charge of witness intimidation in the instant case with a plea agreement that also disposed of two other pending cases. Specifically, he agreed to plead guilty as charged to witness intimidation, and the State agreed to recommend a period of incarceration without specifying a recommended term of imprisonment. The State also agreed to amend the charge of strangulation and suffocation in Milwaukee County Circuit Court case No. 2018CF3299, to a charge of disorderly conduct and to recommend an unspecified period of incarceration in exchange for Thompson's guilty plea to that charge, and to move to dismiss and read in the charge in Milwaukee County Circuit Court case No. 2018CF4315. The circuit court

accepted Thompson's guilty pleas and granted the State's motion to dismiss and read in the remaining charge.

At sentencing, the circuit court imposed a four-year term of imprisonment for witness intimidation and bifurcated the term as one year of initial confinement and three years of extended supervision. The circuit court ordered Thompson to serve that sentence concurrently with the ninety-day sentence imposed in case No. 2018CF3299, but consecutive to the sentence that he was already serving in an unrelated matter. The circuit court also imposed a \$100 domestic abuse surcharge. Thompson appeals.²

The no-merit report addresses the potential issues of whether Thompson entered his guilty plea in the instant matter knowingly, intelligently, and voluntarily, and whether the circuit court properly exercised its sentencing discretion. This court is satisfied that appellate counsel properly analyzed those issues, and we agree with appellate counsel that they lack arguable merit. Additional discussion of those issues is not warranted.

We further conclude that Thompson could not pursue an arguably meritorious challenge to the domestic abuse surcharge. As relevant here, the domestic abuse surcharge under WIS. STAT. § 973.055 is implicated if the circuit court: “convicts the [defendant] of a violation of a crime specified in ... [WIS. STAT. §] 940.43 ... and ... [t]he court finds that the conduct constituting the violation ... involved an act by the adult [defendant] against ... an adult with whom the adult [defendant] resides or formerly resided.” *See* § 973.055(1)(a). During the plea

² The judgment of conviction in Milwaukee County Circuit Court case No. 2018CF3299 is not before this court. Appellate counsel advises that Thompson did not pursue an appeal in that matter.

hearing, Thompson’s trial counsel told the circuit court that the allegations in Milwaukee County Circuit Court case No. 2018CF3299 arose while Thompson and L.S.C. were in the home that they shared. In response to the circuit court’s inquiry, Thompson confirmed that trial counsel’s statements were true. At sentencing, the circuit court found that L.S.C. was Thompson’s “live-in girlfriend.” In light of the foregoing, a challenge to the domestic abuse surcharge would lack arguable merit.

Our independent review of the record does not disclose any other potential issues for appeal. We conclude that further postconviction or 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 Leon W. Todd III, is relieved of any further representation of James A. Thompson. *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