



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

February 2, 2021

To:

Hon. Jean M. Kies
Circuit Court Judge
901 N. 9th St., Rm. 504
Milwaukee, WI 53233

Vicki Zick
Zick Legal LLC
P.O. Box 325
Johnson Creek, WI 53038

John Barrett
Clerk of Circuit Court
821 W. State Street, Rm. 114
Milwaukee, WI 53233

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Elizabeth A. Longo
Assistant District Attorney
821 W. State St. - Ste. 405
Milwaukee, WI 53233

Tommy Lee Davis 539200
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2020AP1462-CRNM State of Wisconsin v. Tommy Lee Davis (L.C. # 2018CM1714)

Before Brash, 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).

Tommy Lee Davis appeals a judgment of conviction entered upon his guilty plea to battery as an act of domestic abuse. Appellate counsel, Attorney Vicki Zick, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32.

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.

Davis did not file a response. Upon consideration of the no-merit report and a review of the record as required by *Anders*, we conclude that no arguably meritorious issues exist for an appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, police met with T.C.M. on April 22, 2018, at her home in the 3000 block of West Clybourn Street, in Milwaukee, Wisconsin. She told the officers that Davis, who is the father of her children, had kicked in the door of her residence, entered the home, dragged her into a hallway, and punched her numerous times. The State charged Davis with four misdemeanors: battery, criminal damage to property, trespass, and disorderly conduct. The State further alleged that each crime was an act of domestic abuse.

Davis decided to resolve the charges with a plea agreement that also resolved pending charges in a second matter, Milwaukee County Circuit Court case, No. 2018CF5674. Pursuant to the agreement, he pled guilty in the instant case to battery as an act of domestic abuse, and he also pled guilty to felony bail jumping and misdemeanor criminal damage charged in case No. 2018CF5674.² The State agreed to dismiss and read in the other charges that were pending in both cases and agreed not to charge Davis with any additional crimes arising out of telephone calls that he made to T.C.M. while he was in custody awaiting resolution of the charges. The plea agreement did not include any sentence concessions; both Davis and the State were free to recommend whatever disposition each felt was appropriate.

² Davis filed a second notice of no-merit appeal to challenge his judgments of conviction in Milwaukee County Circuit Court case No. 2018CF5674. Davis did not move to consolidate the two appeals, and they have proceeded separately in this court.

At sentencing, Davis faced maximum penalties of a \$10,000 fine and a nine-month jail sentence for the battery conviction. *See* WIS. STAT. §§ 940.19(1), 939.51(3)(a). The circuit court imposed a nine-month jail sentence and ordered that Davis serve that sentence concurrently with the aggregate forty-two-month term of imprisonment—bifurcated as eighteen months of initial confinement and twenty-four months of extended supervision—imposed in Milwaukee County Circuit Court case No. 2018CF5274. The circuit court additionally set restitution at zero, granted Davis ninety-eight days of presentence credit, and, pursuant to WIS. STAT. § 973.055(1), imposed a \$100 domestic abuse surcharge. Davis appeals.

The no-merit report addresses the potential issues of whether Davis entered his guilty plea knowingly, intelligently, and voluntarily, and whether the circuit court properly exercised its sentencing discretion. This court is satisfied that appellate counsel correctly analyzed these issues, and we agree with appellate counsel that further pursuit of these issues would lack arguable merit. Additional discussion of these issues therefore is not warranted.

We also conclude that Davis could not pursue an arguably meritorious claim that the circuit court erred by finding him ineligible to participate in the challenge incarceration program and the Wisconsin substance abuse program. A person is statutorily disqualified from participating in either program if the person is serving a sentence for any crime specified in WIS. STAT. ch. 940, or is serving a sentence that is not bifurcated. *See* WIS. STAT. §§ 302.045(2)(c)-(cm), 302.05(3)(a)1.-2. A challenge to the eligibility decision would therefore be frivolous within the meaning of *Anders*.

Finally, we conclude that Davis could not pursue an arguably meritorious challenge to the domestic abuse surcharge that the circuit court imposed. 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. §] 940.19 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] has created a child.

See § 973.055(1)(a). At sentencing, Davis admitted that he and T.C.M. had three children together, and the circuit court therefore found that T.C.M. was the mother of his children. Accordingly, a challenge to the domestic abuse surcharge would be frivolous within the meaning of *Anders*.

Our independent review of the record does not disclose any other potential issues for appeal. We therefore 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 Vicki Zick is relieved of any further representation of Tommy Lee Davis 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