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DISTRICT I

July 27, 2021

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Milwaukee County
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Deketrius B. Dotson 563607
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You are hereby notified that the Court has entered the following opinion and order:

2019AP1323-CRNM State of Wisconsin v. Deketrius B. Dotson (L.C. # 2017CF2121)

Before Dugan, 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).

Deketrius B. Dotson appeals from a judgment convicting him of misdemeanor battery as an act of domestic abuse, misdemeanor disorderly conduct as an act of domestic abuse, possession of a firearm as a felon, and second-degree recklessly endangering safety with use of a dangerous weapon as an act of domestic abuse. Dotson was charged on all counts as a habitual offender. His appellate counsel filed a no-merit report pursuant to WIS. STAT.

RULE 809.32 (2019-20) and ***Anders v. California***, 386 U.S. 738 (1967).[1] Dotson received a copy of the report, was advised of his right to file a response, and did not do so. We have independently reviewed the record and the no-merit report as mandated by ***Anders***. We conclude that there is no issue of arguable merit that could be pursued on appeal. We, therefore, summarily affirm.

The charges against Dotson stemmed from an incident that occurred in 2017 when police responded to a call that shots had been fired at a Milwaukee residence. The complaint alleged the victim told police that Dotson, the father of her child, struck her across the face and pulled her hair. Dotson subsequently took the victim's phone without her consent and left the residence. The victim told the police that as Dotson left, he said he was coming back to shoot up the house. Approximately ten minutes later, Dotson returned and the victim saw him point a grey handgun at her. Dotson then kicked open the locked back door to the home and fired two shots into a bedroom wall.

The case proceeded to a jury trial on the charges of misdemeanor battery, misdemeanor disorderly conduct, theft (value not exceeding $2,500), possession of a firearm as a felon, and first-degree recklessly endangering safety. The State called the victim and two other individuals who were in the home when the incident occurred as witnesses at the jury trial. The State also called a police officer who responded to the scene. Dotson did not testify or call any witnesses on his behalf.

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

The no-merit report was filed by Attorney Jorge R. Fragoso. On April 27, 2021, Attorney Pamela Moorshead was substituted as counsel for Dotson and now represents Dotson in this appeal.

At the close of its case, the State moved to amend the charge of first-degree recklessly endangering safety to second-degree recklessly endangering safety. Dotson's trial counsel did not object and further advised the trial court that he intended to request a verdict on the lesser included offense. The trial court granted the State's motion.

The jury found Dotson guilty of four of the five charges against him.[2] The trial court imposed the following sentences: six months of jail time on each of the battery and the disorderly conduct charges, to run concurrent to each other but consecutive to a sentence that Dotson was serving at the time; four and one-half years of initial confinement and four years of extended supervision on the charge of possession of a firearm by a felon, to run consecutive to counts one and two; four and one-half years of initial confinement and three years of extended supervision on the charge of second-degree recklessly endangering safety with use of a dangerous weapon, to run consecutive to count one.

The comprehensive no-merit report discusses whether there were evidentiary or procedural errors that would entitle Dotson to a new trial, whether there was sufficient evidence for findings of guilt, and whether the trial court properly exercised its discretion during sentencing. The no-merit report specifically analyzes whether there would be arguable merit to asserting that Dotson's right to a speedy trial was violated, that the trial court improperly denied trial counsel's motion to withdraw, or that the impeachment evidence introduced at trial was inadmissible. This court is satisfied that the no-merit report properly analyzes the issues it raises

[2] The jury did not find Dotson guilty of theft relating to the victim's phone.

as being without merit and that no procedural trial errors occurred. However, we will briefly elaborate on one point related to sentencing.

This court notes that during the State's sentencing remarks, the prosecutor said that Dotson faced a maximum sentence of twenty-one years on the charge of second-degree recklessly endangering safety with use of a dangerous weapon as a habitual offender.[3] In actuality, Dotson faced a maximum sentence of nineteen years on this charge, taking into account the penalty enhancers. *See* WIS. STAT. §§ 941.30(2) (2017-18) (classifying second-degree recklessly endangering safety as a Class G felony); 939.50(3)(g) (2017-18) (providing that the penalty for a Class G felony is "a fine not to exceed $25,000 or imprisonment not to exceed 10 years, or both"); 939.62(1)(b) (2017-18) (providing that if the actor is a repeater, "[a] maximum term of imprisonment of more than one year but not more than 10 years may be increased … by not more than 4 years if the prior conviction was for a felony"); 939.63(1)(b) (2017-18) (providing that when a person commits a crime while using a dangerous weapon, "[i]f the maximum term of imprisonment for a felony is more than 5 years … the maximum term of imprisonment … may be increased by not more than 5 years").[4]

During its sentencing remarks, in reliance on the prosecutor's statements as to the maximums, the trial court noted that Dotson faced "35 plus years here, 39, 39 years you are facing. I'm not going to give, the [prosecutor] is not asking for anything close to that; less than a quarter of what you could get." When the maximum sentences for the charges were combined,

[3] In the no-merit report, appellate counsel erroneously contends that Dotson faced the same maximum penalty on the charge of second-degree recklessly endangering safety as he faced on the charge of possession of a firearm as a felon.

[4] The underlying crimes and the sentencing occurred in 2017.

Dotson faced thirty-seven years of imprisonment. Given that the circuit court's sentence on the charge of second-degree recklessly endangering safety was below the maximum and the enhancers were never invoked, this misstatement resulting in a two-year difference as to the global maximum Dotson faced is immaterial. There would be no arguable merit to a challenge based on this misstatement. *See* ***State v. Cummings***, 2014 WI 88, ¶75, 357 Wis. 2d 1, 850 N.W.2d 915 (explaining that "[w]hat constitutes adequate punishment is ordinarily left to the discretion of the trial judge. If the sentence is within the statutory limit, appellate courts will not interfere unless clearly cruel and unusual" (citation omitted)).

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 Dotson further in this appeal.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved of further representation of Deketrius B. Dotson 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