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DISTRICT III

September 14, 2021

To:

Hon. John C. Albert
Reserve Judge

Angela Dawn Wenzel
Electronic Notice

Shirley Lang
Clerk of Circuit Court
Marathon County

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Derrick L. Smith 344250
Columbia Correctional Center
P.O. Box 900
Portage, WI 53901-0900

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

2018AP927-CRNM State of Wisconsin v. Derrick L. Smith (L. C. No. 2012CF386)

Before Stark, P.J., Hruz and Gill, 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).

Derrick Smith appeals from an amended judgment convicting him of six felonies. Attorney Angela Wenzel has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20).¹ The no-merit report sets forth the procedural history of the case and addresses Smith's forfeiture of counsel, several pretrial rulings, the sufficiency of the evidence at trial, the jury instructions, and Smith's sentences. Smith was advised of his right to respond to the no-merit report, and he filed a series of motions seeking relief from this court.

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

Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that counsel shall be allowed to withdraw and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

The State charged Smith with first-degree sexual assault, substantial battery by use of a dangerous weapon, two counts of strangulation, false imprisonment, and intimidation of a victim—each as a repeat offender. The charges were all based upon allegations by Smith’s then-girlfriend, Amy,² that Smith had subjected Amy to a prolonged attack in her home, requiring her to seek medical attention. After Smith fired, or caused to withdraw, a succession of six attorneys, the circuit court determined that Smith had forfeited his right to counsel by refusing to cooperate with his attorneys in order to delay the proceedings. Smith proceeded to represent himself on a series of pretrial motions and at trial.

Most significantly among the multiple motions in limine brought by Smith and his attorneys prior to their withdrawal, the circuit court ruled that Smith could not present the expert testimony of a toxicologist or the hearsay testimony of two deceased individuals who had purportedly seen Smith and Amy together shortly after the alleged attack. The court also determined that neither the Marathon County Jail nor the Green Bay Correctional Institution prevented Smith from being able to present a meaningful defense by the administration of jail rules or other alleged “interference” limiting Smith’s access to discovery, legal materials, copying, mailing or medications.

² This matter involves the victim of a crime. Pursuant to WIS. STAT. RULE 809.86(4), we use a pseudonym instead of the victim’s name.

At trial, Amy testified that, over the course of several hours, Smith manually strangled her multiple times, stabbed her with a knife, prevented her from leaving the bedroom, forced her to have vaginal intercourse at knifepoint, and threatened her with reprisals if he got in trouble for the assault. The State also introduced photographs of Amy's injuries and presented the testimony of family members who assisted Amy shortly after the attack, the medical personnel who treated Amy and conducted a sexual assault examination, the law enforcement officers who worked on the case, the laboratory analyst who processed the sexual assault kit, and Smith's mother.

Smith took the stand in his own defense. He testified that Amy came after him with a knife in the bedroom because she was upset about him talking too long on the phone to people she did not know, and that Amy was injured during an ensuing scuffle while he disarmed her. Smith also said that Amy had been drinking and taking pills that evening, including trazodone, which caused her to stumble and fall into the bathtub. Finally, Smith presented two character witnesses who testified that he had a reputation for honesty.

The jury returned guilty verdicts on all counts, and the circuit court ordered a presentence investigation report. Smith appeared at the sentencing hearing with appointed counsel. After hearing from the parties, the court discussed proper sentencing factors, including the gravity of the offense, Smith's character and rehabilitative needs, and the need to protect the public. The court then imposed a controlling sentence of thirty-four years' initial confinement and twelve years' extended supervision on the sexual assault count, with lesser sentences on the other counts to be served consecutively to one another but concurrent to the sexual assault sentence.

We agree with counsel’s description, analysis and conclusion that Smith lacks any arguable basis to challenge his forfeiture of counsel, the circuit court’s pretrial rulings, the sufficiency of the evidence, the jury instructions, or the sentences imposed. We further note that none of Smith’s pro se motions to this court—which are largely focused on his access to his legal materials in prison—identify any viable ground for relief from his judgment of conviction. Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*.

Upon the foregoing,

IT IS ORDERED that the amended judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Angela Wenzel is relieved of any further representation of Derrick Smith in this matter pursuant to 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