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DISTRICT II

November 17, 2021

To:

Hon. Gary R. Sharpe
Circuit Court Judge
Electronic Notice

Ramona Geib
Clerk of Circuit Court
Fond du Lac County
Electronic Notice

Colleen Marion
Electronic Notice

Eric Toney
Attorney at Law
District Attorney's Office
160 S. Macy St.
Fond du Lac, WI 54935

B.J.S.

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

2021AP1287-NM

In the interest of B.J.S., a person under the age of 18:
State of Wisconsin v. B.J.S. (L.C. #2019JV102)

Before Grogan, 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).

B.J.S., born in December 2005, appeals an order adjudicating him delinquent. His appellate counsel, Attorney Colleen Marion, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32. Attorney Marion provided B.J.S. with a copy of the report, and both Attorney Marion and this court advised him that he had the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

right to file a response. B.J.S. did not respond. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders*, we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm.

The State filed a petition on December 23, 2019, requesting a determination that B.J.S. was delinquent because he took the property of another, an act that, if committed by an adult, would be a Class A misdemeanor carrying maximum penalties of nine months in jail and a \$10,000 fine. *See* WIS. STAT. §§ 938.255(1)(d), 943.20(1)(a) and (3)(a), and 939.51(3)(a). In support, the State alleged that on October 29, 2019, B.J.S. accompanied his father, B.S., to the home of P.J. and S.L. According to the petition, B.J.S. spent most of the time with P.J.’s intellectually disabled daughter, E.J., and the two “had free run of the house.” Approximately ten days later, P.J. discovered that an emerald bracelet was missing from its box. E.J. then disclosed that she saw B.J.S. put the bracelet in his pocket. Soon thereafter, S.L. realized that 250 of his collectible coins were missing from his dining room hutch. After an investigation, police concluded that B.J.S. took the bracelet and the coins.

B.J.S. denied taking the missing property, and the matter proceeded to a fact-finding hearing before the circuit court. *See* WIS. STAT. § 938.31(2). The circuit court heard testimony from P.J., S.L., E.J., B.S., and from an investigating officer. At the conclusion of the hearing, the circuit court found that the evidence proved beyond a reasonable doubt that B.J.S. stole the bracelet and the coins. The circuit court therefore adjudicated him delinquent. Following a dispositional hearing, the circuit court placed B.J.S. in his parents’ home for one year with conditions of supervision, and the circuit court ordered him to pay \$1,524 as restitution. *See* WIS. STAT. §§ 938.335 and 938.34.

In the no-merit report, appellate counsel considers whether the State presented sufficient evidence to support the circuit court's conclusion that the State proved the allegations in the petition beyond a reasonable doubt. Appellate counsel sets forth the elements of misdemeanor theft, the evidence supporting those elements, and the applicable standard of review. Appellate counsel also examines the circuit court's evidentiary rulings to determine whether they would support an arguably meritorious claim for relief. Finally, appellate counsel considers whether the circuit court properly exercised its discretion in fashioning a disposition. Counsel's discussion includes an examination of whether the terms of supervision were lawful, whether the circuit court made necessary findings before ordering restitution, and whether the circuit court imposed a reasonable restitution order. This court is satisfied that appellate counsel properly analyzed the foregoing issues and correctly concluded that they lack arguable merit. No further discussion of these matters is required.

Appellate counsel did not discuss the absence of a colloquy on the record between the circuit court and B.J.S. regarding his decision not to testify at the fact-finding hearing. A circuit court must conduct a colloquy on the record with a criminal defendant to determine whether the defendant is knowingly and voluntarily waiving the right to testify at trial. *See State v. Weed*, 2003 WI 85, ¶40, 263 Wis. 2d 434, 666 N.W.2d 485. Juvenile delinquency proceedings, however, are not criminal proceedings. *See State v. Hezzie R.*, 219 Wis. 2d 848, 892, 580 N.W.2d 660 (1998). In *State v. Lagrone*, 2016 WI 26, ¶¶51-52, 368 Wis. 2d 1, 878 N.W.2d 636, our supreme court declined to extend the obligation imposed in *Weed* to a noncriminal proceeding. Accordingly, B.J.S. could not mount an arguably meritorious challenge to the delinquency adjudication based on the omission of a colloquy regarding his decision not to testify at the fact-finding hearing.

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.

Therefore,

IT IS ORDERED that the dispositional order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ordered that Attorney Colleen Marion is relieved of further representation of B.J.S. in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals