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DISTRICT I

November 23, 2021

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

2019AP1710-CRNM State of Wisconsin v. Jerimy Cordell Whitelaw
(L.C. # 2015CF1308)

Before Brash, C.J., Donald, P.J., and Dugan, J.

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).

Jeremy Cordell Whitelaw appeals a judgment convicting him after a jury trial of one count of first-degree recklessly endangering safety and one count of unlawfully possessing a firearm after being convicted of a felony. Appointed appellate counsel, Marcella DePeters, filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-

20),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Whitelaw responded to the no-merit report. After considering the no-merit report and the response, and after conducting an independent review of the record as mandated by *Anders*, we conclude that there are no issues of arguable merit that Whitelaw could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, Whitelaw fled from two City of Milwaukee police officers when they attempted to question him. As one of the officers chased Whitelaw on foot, Whitelaw repeatedly fired his gun at the officer. Whitelaw was charged with two counts of attempted first-degree intentional homicide and one count of unlawfully possessing a firearm as a convicted felon. A jury found Whitelaw guilty of one count of first-degree recklessly endangering safety, which is a lesser-included crime of first-degree intentional homicide, and one count of unlawful possession of a firearm.

The no-merit report and Whitelaw's response address whether there would be arguable merit to a claim that Whitelaw's conviction should be vacated because the circuit court misused its discretion when it denied Whitelaw's mid-trial motion to remove his counsel, which would have necessitated a mistrial. "Whether trial counsel should be relieved and a new attorney appointed is a matter within the circuit court's discretion." *State v. Jones*, 2010 WI 72, ¶23, 326 Wis. 2d 380, 797 N.W.2d 378. On appeal, we consider whether the circuit court made an adequate inquiry into Whitelaw's request, whether the request was timely made and whether the

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

conflict between counsel and the client would prevent a fair trial. *State v. Lomax*, 146 Wis. 2d 356, 359, 432 N.W.2d 89 (1988).

The circuit court thoroughly considered and addressed Whitelaw's request to discharge his counsel. Whitelaw's primary complaint was that his counsel was not asking enough questions of the witnesses. Whitelaw's counsel informed the court that Whitelaw had been writing down questions for her to ask and passing the questions to her, which she then asked. In its detailed oral ruling on Whitelaw's request, the circuit court observed that counsel had been conferring with Whitelaw throughout the trial and asking questions of the witnesses. The circuit court noted the State's case was winding down and that Whitelaw had made a speedy trial claim, insisting that his trial be conducted as quickly as the circuit court's calendar would allow. The circuit court pointed out that there had already been a significant investment in terms of attorney time, court time and jury time. In light of all of these circumstances, the circuit court properly exercised its discretion in denying Whitelaw's motion to discharge counsel. We conclude that there would be no arguable merit to this claim.

The no-merit report and Whitelaw's response address whether there was sufficient evidence to support the guilty verdicts. When reviewing the sufficiency of the evidence, we look at whether "the evidence, viewed most favorably to the [S]tate and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *State v. Zimmerman*, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (citation omitted). "If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn [the] verdict[.]" *Id.* (citation omitted).

At the jury trial, Police Officer Anthony Milone testified that he and Police Officer Craig Thimm were patrolling the streets in a squad car at 2:00 a.m. when they observed Whitelaw and another man engaged in suspicious activity and what may have been a hand-to-hand drug transaction. Officer Milone testified that he was in the front driver's seat, so he rolled down his window and tried to talk to the men. Both men began walking away in different directions. Officer Milone said that Whitelaw fled on foot and repeatedly fired a gun at him. Officer Milone testified that he returned fire and apprehended Whitelaw.

Officer Thimm testified that Whitelaw took off running when they approached him in the squad car and that Whitelaw was firing his gun. Officer Thimm also told the jury about how he assisted Officer Milone in apprehending and arresting Whitelaw. Milwaukee Police Department Detective Michel Sarenac testified that he recovered six bullet casings from the scene from Whitelaw's gun and thirteen casings fired from Officer Milone's gun. Based on our review of the trial transcript and other evidence, which we have briefly summarized here, we conclude that there was sufficient evidence to find Whitelaw guilty of the charges.

Whitelaw contends in his response that the evidence was insufficient as to the first-degree recklessly endangering safety conviction because Officer Milone did not positively identify Whitelaw out of court. Regardless of whether Officer Milone was able to identify Whitelaw after the fact, Officer Milone testified that he had Whitelaw in sight during the chase and then arrested him. The jury could reasonably infer that Whitelaw was the perpetrator based on Officer Milone's testimony. Whitelaw next contends that there was insufficient evidence adduced at trial to support the firearm conviction because his DNA was not found on the gun. Whitelaw's argument is meritless because Officer Milone testified that Whitelaw had a gun and was shooting at him. Officer Thimm also testified that Whitelaw was firing a gun. The jury

could reasonably infer that Whitelaw had possession of a firearm based on the officers' testimony. There would be no arguable merit to this claim.

The no-merit report next addresses whether there would be arguable merit to an appellate challenge to the sentence imposed on Whitelaw. The circuit court sentenced Whitelaw to a total of ten years and six months of initial incarceration and eight years of extended supervision. The circuit court considered appropriate sentencing objectives and explained that the sentence it imposed was based on various sentencing criteria applied to the facts of this case. *See State v. Brown*, 2006 WI 131, ¶26, 298 Wis. 2d 37, 725 N.W.2d 262. Because the circuit court properly exercised its discretion, there would be no arguable merit to an appellate challenge to the sentence.

Whitelaw argues in his response that he was improperly denied a preliminary hearing. A preliminary hearing was held on April 7, 2015. Whitelaw appeared in person. Whitelaw's counsel cross-examined the State's witness. Therefore, there is no arguable merit to Whitelaw's claim that he was denied a preliminary hearing.

Whitelaw also argues in his response that he received ineffective assistance of trial counsel. A defendant receives constitutionally ineffective assistance of counsel if his counsel performs deficiently and counsel's deficient performance prejudices the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Our review of the record reveals no errors by trial counsel. Whitelaw contends that his trial counsel should have investigated a note by hospital staff that said that the police told hospital staff that Whitelaw was among other males who shot at the police, which suggests that there may have been more than one person shooting at police. Even if there was more than one person shooting at the police—an allegation that is not

supported by the record—Officer Milone testified that he saw Whitelaw shooting at him. Officer Milone’s testimony supports the convictions. Therefore, trial counsel did not render ineffective assistance by failing to further investigate this hospital note. *See State v. Golden*, 185 Wis. 2d 763, 771, 519 N.W.2d 659 (Ct. App. 1994) (counsel does not provide ineffective representation by failing to raise a meritless claim). There would be no arguable merit to a claim that Whitelaw received ineffective assistance of trial counsel.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. To the extent that we did not explicitly address in this opinion any of the issues that Whitelaw raised in his response, we have considered them and concluded that they are without arguable merit.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Marcela DePeters is relieved of any further representation of Whitelaw 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