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DISTRICT I

December 7, 2021

To:

Hon. Michael J. Hanrahan
Circuit Court Judge
Electronic Notice

Hon. Frederick C. Rosa
Circuit Court Judge
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
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Winn S. Collins
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John D. Flynn
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Brian Patrick Mullins
Electronic Notice

Henry Zachary Ezell 342277
Kettle Moraine Correctional Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2019AP2046-CRNM State of Wisconsin v. Henry Zachary Ezell (L.C. # 2017CF1010)

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).

Henry Zachary Ezell appeals a judgment convicting him after a jury trial of three felonies related to his attack of N.D., who was his girlfriend and living with him at the time, and K.C., who was their next door neighbor. Ezell also appeals the circuit court's order denying his

postconviction motion.¹ Appointed appellate counsel, Attorney Mitchell Barrock, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),² and *Anders v. California*, 386 U.S. 738, 744 (1967).³ Ezell was informed of his right to respond but he has not done so. After considering the no-merit report and conducting an independent review of the record as mandated by *Anders*, we conclude that there are no issues of arguable merit that Ezell could raise on appeal. Therefore, we summarily affirm. See WIS. STAT. RULE 809.21.

According to the criminal complaint, Ezell and N.D. were arguing in the hallway of their apartment building at 3:30 a.m. K.C., who lived next door, let N.D. into her apartment and tried to stop Ezell from coming inside. Ezell forced the door partially open while N.D. and K.C. tried to hold it shut. Ezell reached through the partially opened door and slashed both women in the arms with a box cutter or razor. Ezell then forced his way inside and chased N.D. into a bedroom, where he struck her five times in the face.

After a trial, the jury found Ezell guilty of one count of substantial battery with a dangerous weapon and as a repeater; one count of battery with a dangerous weapon, as a repeater, and as an incident of domestic violence; and one count of battery as a repeater and as an incident of domestic violence. The circuit court sentenced Ezell to an aggregate term of ten years of imprisonment, consisting of six years of initial confinement and four years of extended supervision. Ezell moved for postconviction relief, arguing that he received ineffective

¹ The Honorable Michael J. Hanrahan presided over the jury trial. The Honorable Frederick C. Rosa decided the postconviction motion.

² All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

³ Assistant State Public Defender Brian Patrick Mullins was substituted as counsel while this appeal was pending because Attorney Mitchell Barrock withdrew due to health issues.

assistance of trial counsel because his trial counsel failed to discuss the evidence in the case with him in a meaningful manner before trial, failed to provide him with copies of discovery, including photographs, and failed to discuss the advantages and disadvantages of the plea offer. The circuit court denied Ezell's motion without a hearing.

The no-merit report addresses whether Ezell's conviction was supported by the evidence adduced at trial. 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).

K.C. testified about how she tried to assist N.D., who asked to come into her apartment. She told the jury that Ezell, who she had met several times, forced her door partially open and slashed both her arm and N.D.'s arm with a razor or similar object. The State introduced graphic photos of the injuries that K.C. and N.D. sustained. Based on K.C.'s testimony and the photographic evidence, there was sufficient evidence to find Ezell guilty of the charges. There would be no arguable merit to a claim that there was insufficient evidence presented at trial to support the verdict.

The no-merit report also addresses whether Ezell was denied the effective 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). Ezell argued in his postconviction motion that his trial counsel did not discuss all of the facts and evidence in the case with him, especially the photos of the victims' injuries. We agree with the circuit court's detailed written decision rejecting Ezell's claim and its conclusion that Ezell's allegations of ineffective assistance of counsel were insufficient to warrant a hearing. Ezell's motion states that "he would have *most likely* taken the plea offer from the State if he had known the magnitude of the State's evidence against him. Ezell does not state that he *would have* accepted the offer if he had viewed the discovery materials before trial. As such, Ezell cannot show that he was prejudiced. Therefore, there would be no arguable merit to a claim of ineffective assistance of trial counsel.

The no-merit report also addresses whether there would be arguable merit to an appellate claim that Ezell's right to a fair trial was violated. We agree with the no-merit report's analysis of the jury selection proceedings and the objections made at trial and we agree with its assessment that there is nothing about these proceedings that presents grounds for an appellate challenge.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction and order denying postconviction relief.

Accordingly,

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

IT IS FURTHER ORDERED that Attorney Brian Patrick Mullins is relieved of any further representation of Ezell 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