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DISTRICT III

March 22, 2022

To:

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Electronic Notice

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Clerk of Circuit Court
Douglas County Courthouse
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Richard Arthur Dhols, Jr.
P.O. Box 1721
Superior, WI 54880

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

2020AP707-CRNM State of Wisconsin v. Richard Arthur Dhols, Jr.
(L. C. No. 2017CF195)

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).

Counsel for Richard Dhols, Jr., has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),[1] concluding that no grounds exist to challenge Dhols' convictions for one count of battery or threat to a witness and two counts of felony bail jumping. Dhols was informed of his right to file a response to the no-merit report, and he has not responded. Upon our independent review of the record, as mandated by ***Anders v. California***, 386 U.S. 738

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

(1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

An Information charged Dhols with five counts: threat to a judge (Count 1); disorderly conduct (Count 2); battery or threat to a witness (Count 3); and two counts of felony bail jumping (Counts 4 and 5). The charges were premised on statements that Dhols made on May 3, 2017, during a recorded visit with his son's mother, R.S., who was an inmate at the Douglas County Jail. At the time of the visit, Dhols' son had been removed from Dhols' and R.S.'s care, had been placed with R.S.'s mother, and was the subject of a pending child-in-need-of-protection-or-services (CHIPS) proceeding. The Honorable George Glonek was the circuit court judge in the CHIPS case. During the May 3 visit, Dhols told R.S.: "Judge Glonek, he's a piece [of] shit, too. I'll shoot that cocksucker, too." That statement formed the basis for Count 1.

Dhols also made a number of profane comments regarding R.S.'s mother during the May 3 visit, including: "Your mom's a piece [of] shit, and she's gonna fuckin' die. Slowly and painfully. Fuck that cunt. Fucking hate her. I will fucking destroy her." Dhols' comments about R.S.'s mother formed the basis for Count 2. Dhols also made a comment during the May 3 visit about N.W., a social worker who was involved in the CHIPS case and who testified twice during the CHIPS proceedings. Dhols stated: "Go see that bitch, [N.W.], too. … Fuck that skank. I'm gonna fuckin', I'm gonna drag her around by the fuckin' hair, tie her to my fuckin' truck and drag her down the road. Fuckin' cunt." That statement formed the basis for Count 3.

The State alleged that at the time Dhols made these statements, he had been released on bail in Douglas County case Nos. 2017CF69 and 2017CF125. The State further alleged that Dhols had been charged with a felony in each of those cases and that his bail conditions in both

cases required him not to commit new crimes. Dhols' violation of those conditions by committing Counts 1, 2 and 3 formed the basis for Counts 4 and 5—the felony bail jumping charges.

Dhols entered not-guilty pleas to each of the five charges against him, and the case proceeded to a jury trial. On the morning of trial, before the jury was selected, the parties stipulated that if the jury found Dhols guilty of Count 1, 2 or 3, then the circuit court could find him guilty of the two felony bail jumping charges—Counts 4 and 5—as a matter of law. During the evidentiary portion of Dhols' trial, the State presented testimony from a law enforcement officer, Judge Glonek, and N.W. The recording of Dhols' May 3, 2017 visit to the jail was also played for the jury.

The jury ultimately found Dhols not guilty of Counts 1 and 2—threat to a judge and disorderly conduct—but guilty of Count 3—battery or threat to a witness. Because the jury had reached a guilty verdict on Count 3, the circuit court found Dhols guilty of Counts 4 and 5, pursuant to the parties' stipulation. The court subsequently withheld sentence on each of the three charges for which Dhols had been convicted and imposed concurrent two-year terms of probation, with four months' conditional jail time on Count 3.

The no-merit report addresses: (1) whether the evidence was sufficient to support Dhols' convictions; (2) whether the circuit court erred by denying the defense's pretrial motion to dismiss, which alleged that Dhols' statements during the recorded jail visit did not constitute "true threats"; and (3) whether the court erroneously exercised its sentencing discretion. We agree with counsel's description, analysis and conclusion that these potential issues lack arguable merit, and we therefore do not address them further.

Beyond the three issues listed above, the no-merit report asserts that appellate counsel "reviewed all transcripts for the myriad of potential issues that could be raised" and "found no arguably meritorious issues, whether objected to or not objected to by defense counsel, to form a basis for a motion or appeal." Having independently reviewed the record, we agree with counsel that no arguably meritorious issues exist.

First, we note that there would be no arguable merit to a claim that Dhols is entitled to relief based on the circuit court's handling of any pretrial motions. Prior to trial, Dhols filed a motion asking the judge initially assigned to the case to recuse himself based on his "significant professional contact" with Judge Glonek—one of the alleged victims. That motion was granted, and a judge from another county was assigned to the case.

Dhols later moved for a change of venue, asserting it was reasonably likely that he would not receive a fair trial in Douglas County based on Judge Glonek's significant ties to the area and his position as a sitting Douglas County judge. The circuit court denied Dhols' motion, concluding that his general assertions regarding Judge Glonek's ties to Douglas County were insufficient to establish a reasonable likelihood that Dhols would not receive a fair trial. In making that decision, the court considered Douglas County's population of approximately 44,000 people, the lack of evidence as to what percentage of the population had a favorable or unfavorable opinion of Judge Glonek, the lack of evidence as to what percentage of the population had voted in the last judicial election, and the lack of evidence of any pretrial publicity referencing the fact that a threat had been made to one of Douglas County's sitting judges.

The circuit court applied the proper legal standard to the facts of record and provided a reasoned basis for its decision to deny Dhols' motion for a change of venue. As such, there would be no arguable merit to a claim that the court erroneously exercised its discretion in that regard. *See* ***Hoppe v. State***, 74 Wis. 2d 107, 110, 246 N.W.2d 122 (1976) ("The question of change of venue is addressed to the trial judge's discretion."). Moreover, we observe that the jury ultimately acquitted Dhols of the threat-to-a-judge charge, which would belie any assertion that Judge Glonek's ties to Douglas County prevented Dhols from receiving a fair trial.

Any claim that the circuit court's pretrial evidentiary rulings were erroneous would also lack arguable merit. The court properly granted the State's motion to admit the recording of the statements Dhols made during the May 3, 2017 jail visit. The defense conceded that those statements were admissible under ***Miranda v. Arizona***, 384 U.S. 436 (1966), and ***State ex rel. Goodchild v. Burke***, 27 Wis. 2d 244, 133 N.W.2d 753 (1965), and the court expressly found that the statements were not made in a custodial setting. The court also found, based on the evidence presented by the State, that Dhols would have known the jail visit was being recorded.

The circuit court also properly exercised its discretion by granting the State's motion to admit evidence of prior harassing and profane voicemail messages that Dhols had left for N.W. The court reasonably concluded that those messages were admissible as other-acts evidence because they were offered for a permissible purpose (i.e., to establish a plan, knowledge, intent or motive), they were relevant, and their probative value was not outweighed by the danger of unfair prejudice. *See* ***State v. Sullivan***, 216 Wis. 2d 768, 772-73, 576 N.W.2d 30 (1998). In addition, the court properly exercised its discretion by denying Dhols' motion in limine seeking to prohibit "any state witness from testifying about whether that witness believed that Mr. Dhols' statements were serious threats or from testifying about what impact those statements had on the

witness." The court reasonably determined that such evidence was admissible because it was relevant to determining whether Dhols' statements were "true threats" based on the factors set forth in ***State v. Perkins***, 2001 WI 46, ¶31, 243 Wis. 2d 141, 626 N.W.2d 762.

Our independent review of the record also confirms that there would be no arguable merit to a claim that Dhols is entitled to relief based on errors in the jury selection process. The no-merit report notes that during voir dire, Juror W. stated he believed that police officers are more likely than other witnesses to tell the truth when testifying under oath. The defense did not move to strike Juror W., and he ultimately served on the jury. These circumstances do not give rise to an arguably meritorious claim, however, because after Juror W. initially stated he believed that police officers are more likely than other witnesses to be truthful, Juror W. confirmed that he believed he could be fair and impartial; that he would listen to all of the evidence from all of the witnesses, regardless of whether they were police officers; and that he understood all of the witnesses would be under oath and would therefore be required to testify truthfully. Furthermore, the fact that the jury acquitted Dhols on Counts 1 and 2 tends to dispel any notion that Juror W.'s presence on the jury prevented Dhols from receiving a fair trial.

Our independent review of the record also confirms that there would be no arguable merit to any claim for relief based on the jury instructions, the attorneys' opening statements, or their closing arguments. Nor could Dhols argue that the circuit court erred when ruling on any objections made at trial, as the record shows that the court resolved all objections in Dhols' favor.

In addition, there would be no arguable merit to a claim that the circuit court erred by declining to grant Dhols' motion to dismiss at the close of the State's case.[2] Dhols' trial attorney conceded that the motion "track[ed]" Dhols' pretrial motion to dismiss, in that it argued the State had failed to establish that Dhols' statements were "true threat[s]." We have already concluded that there would be no arguable merit to a claim that the court erred by denying Dhols' pretrial motion to dismiss or to a claim that the evidence was insufficient to support the jury's guilty verdict on Count 3. Under these circumstances, there would likewise be no arguable merit to a claim that the court erred by failing to grant Dhols' motion to dismiss at the close of the State's case.

Any claim that Dhols did not validly waive his right to testify would also lack arguable merit. The circuit court conducted an on-the-record colloquy with Dhols, during which it ascertained that Dhols was aware of his constitutional right to testify at trial and his corresponding right not to testify, that he understood those rights, and that he had discussed them with his attorney. *See* ***State v. Weed***, 2003 WI 85, ¶43, 263 Wis. 2d 434, 666 N.W.2d 485. Dhols also confirmed that no one had made any threats or promises to induce him to waive his right to testify. The court found that Dhols' waiver was made freely, intelligently and voluntarily, and the record does not reveal any basis to challenge that finding on appeal.

The circuit court similarly conducted an on-the-record colloquy with Dhols regarding the parties' stipulation that the court could find Dhols guilty of Counts 4 and 5—the felony bail jumping charges—if the jury found Dhols guilty of Count 1, 2 or 3. During that colloquy, Dhols

[2] The circuit court took Dhols' motion to dismiss under advisement and allowed the case to proceed to the jury. Dhols did not renew his motion to dismiss after the jury returned its verdicts.

confirmed that he understood the stipulation, that he had thoroughly discussed it with his attorney, and that he wished to waive his right to a jury trial on the bail jumping charges but proceed to trial on the remaining counts. Although the court did not ask Dhols whether any promises or threats had been made to him to induce him to enter into the stipulation, the no-merit report asserts that appellate counsel "is not aware of any threats or promises." On this record, any challenge to the parties' stipulation regarding the bail jumping counts would lack arguable merit.

Finally, having independently reviewed the record, we do not discern any basis for an argument that Dhols' trial attorney was constitutionally ineffective. Our independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Katie Babe is relieved of her obligation to further represent Richard Dhols, Jr., 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