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DISTRICT III

May 10, 2022

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
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Melissa M. Petersen
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Joshua M. Wojtczak 549565
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

2019AP1347-CRNM State of Wisconsin v. Joshua M. Wojtczak
(L. C. No. 2017CF461)

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).

Joshua Wojtczak appeals from a felony conviction for burglary of a building and a misdemeanor conviction for criminal damage to property, each as a repeat offender. Attorney Melissa Petersen 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 the pretrial rulings, voir dire, jury instructions, opening and closing arguments by

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

counsel, sufficiency of the evidence, Wojtczak's sentences, and trial counsel's performance. Wojtczak was advised of his right to respond to the no-merit report, but he has not filed a response. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude there are no arguably meritorious issues for appeal.

Prior to trial, Wojtczak filed a successful motion to limit the scope of an investigating officer's testimony and a partially successful motion to exclude evidence that was disclosed late. Wojtczak also successfully objected to the State's motion to admit other-acts evidence.

At trial, a woman whom we will call Mary² testified that she and her children returned from an out-of-town excursion to find the plexiglass window portion of the door to their home lying in pieces, mainly on the floor inside of the house. It appeared to Mary that the plexiglass had been kicked in because Mary observed a shoeprint on the largest piece. Mary quickly discovered that monies she kept on a kitchen cupboard shelf and that her son kept in a white pirate cup in the cupboard were gone.

Mary suspected that Wojtczak had taken the money because he was present when she had put her money into the cupboard. He had also watched her son put his money into the pirate cup. She called the police and reported the break-in, theft, and her suspicions. Then, of her own

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.

accord, Mary drove to where she believed Wojtczak had been staying.³ One of Wojtczak's roommates let Mary inside and allowed her to take a pair of shoes Mary had seen Wojtczak wearing. Mary believed the tread on the shoes looked like the shoeprint on her plexiglass, so she turned the shoes over to the police.

Also at trial, Wojtczak's roommate identified the shoes in evidence as a pair of sneakers he had given to Wojtczak and later allowed Mary to take. The police officer who collected the shoes testified that the pattern on the tread appeared "very similar" to the shoeprint left on the plexiglass. A detective who periodically worked as an evidence technician with the crime scene unit dusted the plexiglass to make the shoeprint more visible. Another detective assigned to the case testified about specific points of similarity between the soles of Wojtczak's shoes and the shoeprint on the plexiglass, including that they were the same size.

Wojtczak chose not to testify. Following closing arguments and jury instructions, the jury deliberated and returned guilty verdicts on both counts. The circuit court ordered a presentence investigation report. Wojtczak presented an alternate defense sentencing memorandum. After hearing from the parties at the sentencing hearing, the court discussed proper sentencing factors, including the gravity of the offense, the need to protect the public, and the character of the offender. The court then sentenced Wojtczak to eighteen months' initial confinement and six months' extended supervision on the criminal damage count, to be served concurrently with a sentence Wojtczak was already serving on another case. The court imposed a consecutive five-year term of probation on the burglary count.

³ The police did not direct Mary to go to Wojtczak's residence, and Mary did not inform the police of the visit until after it was completed, when she called to say that she had Wojtczak's shoes.

We agree with counsel's description, analysis, and conclusion that any challenges to the pretrial rulings, voir dire, jury instructions, opening and closing arguments by counsel, sufficiency of the evidence, Wojtczak's sentences, or trial counsel's performance would lack arguable merit. 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*. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Melissa Petersen is relieved of any further representation of Joshua Wojtczak 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