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DISTRICT IV

June 9, 2022

To:

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Circuit Court Judge
Electronic Notice

Cindy Joosten
Clerk of Circuit Court
Wood County Courthouse
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Renardo L. Carter 319998
New Lisbon Correctional Inst.
P.O. Box 2000
New Lisbon, WI 53950-2000

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

2020AP1955-CRNM State of Wisconsin v. Renardo L. Carter (L.C. # 2018CF325)

Before Kloppenburg, Fitzpatrick, and Graham, 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).

Attorney Steven Roy, as appointed counsel for Renardo Carter, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Counsel provided Carter with a copy of the report, and Carter responded to it. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our

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

independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

After a court trial, Carter was convicted of one count of delivery of less than three grams of heroin. The court imposed a sentence of three years of initial confinement and five years of extended supervision.

The no-merit report addresses whether the evidence was sufficient to support the conviction. We affirm the finding of guilt unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990); ***State v. Schulpius***, 2006 WI App 263, ¶11, 298 Wis. 2d 155, 726 N.W.2d 706 (***Poellinger*** standard applies to court trials). Credibility of witnesses is for the trier of fact. ***Poellinger***, 152 Wis. 2d at 504.

Without attempting to recite the evidence in detail here, we are satisfied that there is no arguable merit to this issue based on the evidence that was presented at trial. The conviction was supported by the testimony of a police officer, a confidential informant, and a lab analyst, and by an audio recording of a controlled purchase. This evidence was not inherently incredible and, if believed, was sufficient to establish the elements of the charge.

In Carter's response, he argues that the officer gave false testimony at trial, and that the State knowingly presented this false evidence. In addition, he argues that there were errors and gaps in the chain of custody of the substance evidence, and as a result the evidence should not have been admitted. Both arguments are based on the same discrepancy in written documents which the officer was asked about on cross-examination that we now describe.

The officer testified that the controlled purchase occurred at approximately 6:00 p.m. on August 24, 2017. However, the form reporting the positive result on the officer's chemical field test stated that the test was conducted on August 24 at a military time of "1137." In other words, the form appears to show the result of a test that was conducted before the controlled purchase in this case. The officer testified that he did not conduct the test of the substance in this case on the night of the controlled purchase, but that he did so the next day and, therefore, he believed that the August 24 date on the form was incorrect and should have been August 25. In making its decision to find Carter guilty, the court addressed this discrepancy and accepted the officer's explanation that the date on the form was incorrect.

Based on the trial record, we conclude that it would be frivolous to argue that the circuit court erred by accepting the officer's explanation. The discrepancy between the time the purchase was made and the time shown on the test form did not, by itself, compel only a conclusion that the substance tested was not the substance obtained in the purchase. That is so because the officer's explanation was plausible, and there was no other evidence in the trial record to refute that explanation.

In addition to this record from the trial, in Carter's response to the no-merit report he relies on material from discovery, not introduced at trial, that he has provided to us on the topic of the discrepancy between the test form and the time of the purchase.

Because this material was not introduced at trial, the issue for postconviction relief would be whether Carter's trial counsel was ineffective by not introducing this material. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense. ***Strickland v. Washington***, 466 U.S.

668, 687 (1984). We conclude that there is no arguable merit to this issue because neither of the items on which Carter relies raises significant doubts about the officer's explanation that the August 24 date on the test form was incorrect and should have been August 25, for reasons we next explain.

One item Carter provides is the revocation summary from his earlier probation, which shows that he was arrested for this current offense on October 9, 2017, and not on the August 25, 2017 arrest date that appears on the form reporting the field test result. The arrest date on the test form may provide some support for Carter's assertion. However, it is also reasonable to conclude that the information about the arrest date on the revocation summary is incorrect, and Carter gives no reason to conclude that all other information in the record regarding his arrest date is incorrect.

Carter also provides a copy of a "Chain Of Custody Report" for this case. It shows that the substance was collected on the evening of the purchase and then placed in a temporary locker, with transfer to the property room on August 25, 2017, at 12:20 p.m. The custody form does not support the inference that Carter proposes. To the contrary, it slightly supports the officer's testimony that the date on the test form was incorrect. The custody form shows that the substance was transferred from temporary storage to the property room on August 25 at 12:20 p.m., which is within an hour after what the officer testified was the correct date and time that he tested the substance. In other words, the custody form is consistent with the officer's testimony of not having tested the substance on the evening it was obtained, but instead doing so the next morning, and then submitting the evidence to the property room for permanent storage.

Carter next argues in his response that the State failed to disclose in discovery the agreements related to future prosecution of the confidential informant. Although the State may not have disclosed it in discovery, the informant testified at trial that he was compensated with "time off," which we infer to mean a reduced criminal sentence. Carter has not provided any information suggesting that there was additional compensation beyond that. Accordingly, whatever discovery violation may have occurred, there is no basis to argue that it affected the trial.

The no-merit report addresses Carter's sentence. The sentence is within the legal maximum. As to discretionary issues, the standards for the circuit court and this court are well established and need not be repeated here. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

Our review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Roy is relieved of further representation of Carter 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