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DISTRICT I

July 12, 2022

To:

Hon. David L. Borowski
Circuit Court Judge
Electronic Notice

Dustin C. Haskell
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Jermaine Deangleo House
301 Troy Drive
Mendota Mental Health Institute
Madison, WI 53704

Winn S. Collins
Electronic Notice

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

2021AP2140-CRNM State of Wisconsin v. Jermaine Deangleo House
(L.C. # 2016CF2232)

Before Donald, P.J., Dugan and White, 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 Jermaine Deangleo House has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),¹ concluding there would be no arguable merit to a challenge to the circuit court's order revoking House's conditional release. Counsel also concluded that there is no arguable merit to a challenge to the circuit court's order denying his motion for post-disposition relief. House was informed of his right to respond to the report, but he has not

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

responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

House was found not guilty of arson by reason of mental disease or defect and committed to the Department of Health Services for twenty years on October 13, 2017. He was placed on conditional release pursuant to WIS. STAT. § 971.17(3). One of the conditions of his release was that he was required to take his medications as prescribed. On March 16, 2020, the Department petitioned to revoke House's conditional release, alleging that he was not psychiatrically stable, that he was not taking his medications as prescribed, that he discharged two fire extinguishers in his apartment complex, and that he broke a window in his aunt's home and threatened to harm her.

On April 16, 2020, the circuit court held a hearing to determine whether House's conditional release should be revoked. Courtney Brooks, House's conditional release agent, was the only witness called to testify at the hearing. The circuit court concluded that the Department had met its burden of showing by clear and convincing evidence that House has broken the rules of his conditional release. The circuit court also concluded that House's actions endangered himself and/or the safety of others. The circuit court then revoked House's conditional release.

House filed a post-disposition motion, arguing that there was insufficient evidence to revoke his conditional release. House also argued that his trial counsel was ineffective for failing to argue that some of the agent's testimony violated House's due process right to confront the witnesses against him. The circuit court rejected these arguments and denied the motion for postdisposition relief.

The no-merit report first addresses whether there would be arguable merit to a claim that there was insufficient evidence to revoke House's conditional release. "The [S]tate has the burden of proving by clear and convincing evidence that any rule or condition of release has been violated, or that the safety of the person or others requires that conditional release be revoked." WIS. STAT. § 971.17(3)(e). We defer to the circuit court's factual findings but independently decide whether the facts are sufficient to revoke an individual from release. *State v. Jefferson*, 163 Wis. 2d 332, 338, 471 N.W.2d 274 (Ct. App. 1991).

Brooks testified that House admitted taking his medications every other day, rather than daily as prescribed. He also admitted to Brooks that he discharged a fire extinguisher in the apartment building in which he lived and knocked over a can of lighter fluid in the common area of the building. Brooks testified that she observed House behaving in a manner that was unusual for him. He had to be repeatedly prompted to go into his apartment to talk with her and her team because he kept getting distracted, he had difficulty focusing during their conversation, he had to be redirected multiple times, and his conversation was "all over the place" and hard to track. This evidence was sufficient to support the circuit court's decision to revoke House's conditional release. There would be no arguable merit to this claim.

The no-merit report next addresses whether there would be arguable merit to a claim that House received ineffective assistance of trial counsel. To prove a claim of ineffective assistance of counsel, a defendant must show: (1) that his or her attorney performed deficiently; and (2) that this deficient performance prejudiced the defendant. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). A reviewing court may dispose of a claim of ineffective assistance of counsel on either ground. *Id.* at 697. To show prejudice, "the defendant must show that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different.” *State v. Carter*, 2010 WI 40, ¶37, 324 Wis. 2d 640, 782 N.W.2d 695 (citation omitted).

The no-merit report addresses whether there would be arguable merit to a claim that House’s attorney should have argued that some of Brooks’ testimony violated his due process right to confront the witnesses against him. There would be no arguable merit to this claim because even if counsel had successfully done so, there is not a reasonable probability that the result of the revocation hearing would have been different. Setting aside Brooks’ testimony that was not based on her first-hand knowledge, Brooks’ remaining testimony showed that House violated the rules of his conditional release by failing to take his medications as prescribed. This testimony was sufficient to support the revocation decision.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court lost competency to issue its order granting revocation of House’s conditional release because the hearing was held in an untimely manner. The Department moved to revoke House’s conditional release on March 16, 2020. The circuit court was required by statute to hold a hearing on the petition within thirty days, meaning that it should have been held by April 15, 2020. WIS. STAT. § 971.17(3)(e) (“The court shall hear the petition within 30 days, unless the hearing or time deadline is waived by the detained person.”). House’s hearing was held on April 16, 2020, so it was one day late. We have previously held that the statutory deadline to hold a hearing on a petition to revoke conditional release is directory, not mandatory. *State v. Schertz*, 2002 WI App 289, ¶14, 258 Wis. 2d 351, 655 N.W.2d 175. Therefore, there would be no arguable merit to a claim that the circuit court lost competency to proceed because the hearing was held one day beyond the statutory deadline.

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

Therefore,

IT IS ORDERED that the orders are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Dustin C. Haskell is relieved of further representing House 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