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DISTRICT III

July 19, 2022

To:

Hon. Robert R. Russell
Circuit Court Judge
Electronic Notice

Thomas S. Barker
Clerk of Circuit Court
Lincoln County Courthouse
Electronic Notice

Galen Bayne-Allison
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Winn S. Collins
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Joseph N. Ehmann
Electronic Notice

Douglas M. Blahnik
430 E. 2nd Street
Merrill, WI 54452

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

2019AP1534-CRNM State of Wisconsin State v. Douglas M. Blahnik
(L. C. No. 2017CM149)

Before Gill, J.¹

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).

Douglas Blahnik appeals from a conviction for criminal trespass to a dwelling. Attorney William Donarski filed a no-merit report, which has been adopted by successor counsel, State Public Defender Regional Manager Joseph Ehmann. *See* WIS. STAT. RULE 809.32 (2019-20). The no-merit report sets forth the procedural history of the case and addresses the sufficiency of the evidence at trial, Blahnik's term and conditions of probation, and Blahnik's claim to be a

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

sovereign citizen immune from jurisdiction. Blahnik 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.

The State charged Blahnik with criminal trespass to a dwelling after a witness reported seeing him break into an apartment using a credit card. Blahnik objected to the jurisdiction of the circuit court on the grounds that he was a “natural and living flesh and blood human being” who was not the “defendant” whose name was listed in capital letters; the judge was an “imposter” to his office; and the statutes under which Blahnik was charged were invalid for lack of enacting clauses and other reasons.

Blahnik requested the “assistance of counsel,” but he also objected to the appointment of any attorney who was an “officer of the court” licensed by the State to practice law. He filed a written statement asserting that the “disadvantages of having a lawyer” included an admission of jurisdiction. The State Public Defender’s Office (SPD) appointed Cana Kohn to represent Blahnik. Kohn moved for, and was granted, permission to withdraw based upon a breakdown of communications with Blahnik. The court warned Blahnik that the SPD would only appoint one more attorney for him, and if Blahnik did not cooperate with that attorney, he could forfeit his right to counsel.

The SPD then appointed Steven Richards to represent Blahnik. Richards informed the circuit court that Blahnik essentially wanted him to serve as standby counsel, which SPD rules would not allow. Blahnik disputed that he was asking for “standby” counsel, asserting that he just wanted the “assistance of counsel.” The court determined that Blahnik was asking for

counsel to be “with him at trial” but not to “represent him as an advocate.” The court allowed Richards to withdraw so that Blahnik could seek a private attorney to serve as standby counsel.

Blahnik never retained private counsel, however. The day before trial, Blahnik moved for the appointment of counsel at county expense. Blahnik also complained that his prior attorneys had never conducted any investigation on his behalf. The circuit court denied the motion to appoint counsel at county expense because Blahnik had qualified for SPD representation. The court also determined that Blahnik had sufficient time to prepare for trial on his own after his attorneys were discharged, and the court refused to reschedule the trial. Blahnik renewed his request for the “assistance of counsel” the morning of trial. The court denied the motion, noting that Blahnik was “abusing the process,” and the court was “just not going to tolerate [it] any longer.”

At trial, Blahnik chose to sit on a bench at the back of the courtroom and to not participate in questioning witnesses or arguing to the jury. The State’s primary witness, Ranay Nicklaus, testified that she heard someone coming upstairs in her eight-unit apartment building. Nicklaus looked through the peep hole in her door and saw Blahnik try several times to turn the handle on the door to a vacant unit across from her. Blahnik then took a plastic card out of his wallet, slipped it into the crack of the door, moved it around until the door “popped open,” and entered the apartment. Nicklaus called 9-1-1 to report a burglary in progress and gave a description of the suspect.

The responding officer, Detective Matthew Waid, made contact with Blahnik in the apartment building. Waid found a Kwik Trip card in Blahnik’s wallet with damage that appeared, in Waid’s experience, to be consistent with having been used to open a door. The

apartment building's owner and manager each testified that they had never given Blahnik permission to enter the vacant apartment. Blahnik confirmed his decision not to testify on the record.

Following instructions from the circuit court and closing argument by the State, the jury found Blahnik guilty. The court proceeded directly to sentencing following the trial. After hearing from the parties, the court placed Blahnik on probation for twelve months, with five days in jail as a condition of probation.

We agree with counsel's description, analysis, and conclusion that any challenges to the sufficiency of the evidence or Blahnik's term or conditions of probation would lack arguable merit. We further agree with counsel's assertion that Blahnik's assorted sovereign citizen claims made throughout the litigation were frivolous. Although counsel does not address the issue, we also note that Blahnik's sovereign citizen beliefs, however unwise, do not provide grounds to challenge his competency to stand trial. *See United States v. Banks*, 828 F.3d 609, 616-17 (7th Cir. 2016).

The most significant potential issue presented on this appeal is whether Blahnik forfeited his right to counsel. Forfeiture of the right to counsel arises when a defendant's actions are frustrating the "orderly and efficient progression of the case." *State v. Suriano*, 2017 WI 42, ¶24, 374 Wis. 2d 683, 893 N.W.2d 543 (citation omitted). In *Suriano*, our supreme court stated that:

Scenarios triggering forfeiture include: (1) a defendant's manipulative and disruptive behavior; (2) withdrawal of multiple attorneys based on a defendant's consistent refusal to cooperate with any of them and constant complaints about the attorneys' performance; (3) a defendant whose attitude is defiant and whose

choices repeatedly result in delay, interfering with the process of justice[;] ... and (4) physical or verbal abuse directed at counsel or the court.

Id. (citation omitted). A forfeiture of the right to counsel “occurs by operation of law without the need to ensure a defendant knows he [or she] is losing [the] right and regardless of whether he [or she] intends to do so.” *Id.*, ¶33.

Here, the circuit court made no explicit determination that Blahnik had forfeited his right to counsel. The determination was implicit, however, in the court’s refusal to entertain Blahnik’s renewed motion for counsel on the morning of trial and in its comment that Blahnik was abusing the process. We conclude that Blahnik’s repeated refusal to allow the SPD attorneys appointed for him to interact with the court frustrated the progression of the case and constituted a forfeiture of counsel as a matter of law. Therefore, Blahnik has no arguable grounds to challenge his lack of counsel at trial or sentencing.

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 is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that State Public Defender Regional Manager Joseph Ehmann is relieved of any further representation of Douglas K. Blahnik 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