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DISTRICT III

August 23, 2022

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
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Jovan N. Williams 575056
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You are hereby notified that the Court has entered the following opinion and order:

2019AP2131-CRNM State of Wisconsin v. Jovan N. Williams (L. C. No. 2016CF1071)

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).

Jovan Williams appeals from an amended judgment convicting him, as a repeat offender, of two counts of a prisoner throwing or expelling bodily substances and from an order denying his postconviction motion for a new trial or resentencing. Assistant State Public Defender Catherine Malchow filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS.

STAT. RULE 809.32 (2019-20).¹ Assistant State Public Defender Andrew Hinkel substituted as counsel for Malchow and has not withdrawn the no-merit report. The no-merit report sets forth the procedural history of the case and addresses the sufficiency of the evidence to support the verdict, Williams' sentences, and whether there are grounds for a new trial or resentencing. Williams 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 Williams with three counts of assault by a prisoner after three correctional officers reported that Williams had thrown feces at them. The complaint further alleged that Williams was a repeat offender based upon a prior felony murder conviction. Williams entered pleas of not guilty and not guilty by reason of mental disease or defect (NGI). At a status hearing prior to the preliminary hearing, Williams' counsel raised the question of competency, and the circuit court ordered a competency evaluation. Based upon the expert's report—which included an opinion that Williams was malingering—the court found Williams competent to proceed, and Williams subsequently withdrew his NGI pleas.

At trial, a correctional officer whom we will call “Connor,”² testified that when he was collecting meal trays from inmates in one of the housing units, Williams hurled a “liquid substance” contained in a milk carton at him through the cell's trap door. The substance struck

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

² This matter involves several victims of a crime. Pursuant to WIS. STAT. RULE 809.86(4), we use pseudonyms instead of the victims' names.

Connor in the face and got all over his clothing. Based upon the odor, Connor believed the substance to be fecal matter. The State introduced photographs taken by another correctional officer, whom we will call “Walter,” showing where the substance had spattered onto Connor. After flushing the substance out of his eyes, Connor went to the hospital for a medical evaluation regarding the potential transmission of diseases.

After taking photographs of Connor, Walter obtained a transparent riot shield and returned to Williams’ cell to secure the trap door, along with a third correctional officer, whom we will call “Anna.” As Walter and Anna approached the cell, Williams hurled a milk carton containing a “brown substance” at them. The shield deflected some of the substance, but some of it got onto Walter’s shoulder. Based on its consistency and odor, Walter believed the substance to be feces. While Walter, Anna, and a supervisor attempted to get the trap door closed, Williams threw the “liquid and brown matter” contents of another milk carton out of the trap door at them. After getting the trap door closed, Walter observed and photographed several stains on his and Anna’s clothing.

Sergeant Timothy Thomas of the Brown County Sheriff’s Department investigated the incident and collected Walter and Anna’s clothing. Thomas cut out samples of the stained portions of the clothing to send to the crime laboratory. Thomas also collected a buccal swab from Williams for comparison. The crime laboratory identified the stains on Walter’s clothing as containing Williams’ DNA profile, but it did not test Anna’s clothing or perform any test to verify that the biological substance in question was actually feces.

The jury found Williams guilty on the counts relating to Connor and Walter and not guilty on the count relating to Anna, who did not testify. The circuit court proceeded directly to

sentencing and imposed, but subsequently vacated, bifurcated prison sentences that failed to address conditions of extended supervision. Following a second sentencing hearing, the court sentenced Williams to one year of initial confinement followed by two years of extended supervision on each count, to be served concurrent to each other but consecutive to a sentence Williams was already serving.

Williams moved for a new trial on the grounds of ineffective assistance of counsel, alleging that his trial attorney failed to advise him that he could have pursued an NGI defense even without the support of an expert opinion. At a postconviction hearing, Williams' trial attorney testified that he was not aware of any cases in which an NGI defense had succeeded without the support of expert testimony. The attorney also expressed concern that if Williams had pursued NGI pleas, the State would have introduced the malingering opinion from Williams' competency evaluation. Ultimately, the attorney said that Williams made the decision not to pursue an NGI defense based upon the consequences that would ensue if the defense were successful, rather than upon the viability of the defense. Williams then testified that he would have proceeded to trial on NGI pleas if he had known he could do so without the support of an expert opinion. The circuit court, however, explicitly rejected Williams' testimony as not credible and concluded that counsel's performance was not deficient.

We agree with counsel's description, analysis and conclusion that any challenges to the sufficiency of the evidence, the sentences, or 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 and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Assistant State Public Defender Andrew Hinkel is relieved of any further representation of Jovan N. Williams 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