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DISTRICT I

August 30, 2022

To:

Hon. Glenn H. Yamahiro
Circuit Court Judge
Electronic Notice

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

Winn S. Collins
Electronic Notice

John D. Flynn
Electronic Notice

Jay R. Pucek
Electronic Notice

Marquese L. Hill
P.O. Box 80554
Milwaukee, WI 53208

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

2019AP2143-CRNM State of Wisconsin v. Marquese L. Hill (L.C. # 2018CF5345)

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).

Attorney Mitchell Barrock, as appointed counsel for Marquese Hill, 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 Hill with a copy of the report, and both counsel and this court advised him of his right to file a response. Hill did not respond. We then ordered counsel to further address two issues, and new counsel Jay Pucek filed a supplemental no-merit report. Hill has not

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

responded to that report within the time we provided. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our independent review of the record as mandated by *Anders*, we conclude that there is no arguable merit to any issue that could be raised on appeal.

After a jury trial, Hill was convicted of one felony count of substantial battery. The court imposed a sentence of eighteen months of initial confinement and two years of extended supervision.

We first address the sufficiency of the evidence. We affirm the verdict 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). Credibility of witnesses is for the trier of fact. *Id.* at 504.

Without attempting to recite the evidence here, we are satisfied that the conviction was supported by the testimony of the victim and photographic evidence. This evidence was not inherently incredible and, if believed, was sufficient to prove the elements of the charge. There is no arguable merit to this issue.

We previously directed Hill's new counsel to review whether there would be an arguably meritorious basis to claim that his trial counsel was ineffective by not discussing details of the case with Hill before trial, making it difficult for him to make an informed decision about going to trial. 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 need not address both components of the analysis if defendant makes an inadequate showing on one. *Id.* at 697.

In the supplemental no-merit report, current counsel concludes that, even if trial counsel's performance was deficient, Hill cannot allege prejudice because he was determined to go to trial and would not have accepted a plea offer, even if his trial counsel had discussed certain details of the case with Hill. This conclusion is supported by an affidavit by current counsel stating that, when discussing our order with Hill, Hill expressed to him that he was intent on taking the case to trial to prove that his actions were justified. Hill has not responded to the supplemental no-merit report to dispute this information. Accordingly, there is no arguable merit to this issue.

We also directed current counsel to review whether there is a basis to argue that the circuit court erroneously denied the motion to withdraw from representation that Hill's trial counsel filed before sentencing. The motion stated that Hill "feels that there exists a breakdown in the trust of the attorney-client relationship where counsel is no longer able to effectively assist Mr. Hill in his defense at his sentencing hearing."

At sentencing, the court asked Hill to explain the problem. Hill then described his belief that there had been a "lack of communication," that "everything was last minute," that he "didn't have a chance to really defend" himself, and that he "didn't have enough time to do anything." The court then had a discussion with Hill during which it stated that "if you would [have] kept your mouth shut in this trial you would have been acquitted," that "when you got up on the witness stand you blew it," that his attorney had done "an excellent job," and that the jury told the court it would have acquitted Hill if he had not testified. The court then denied counsel's motion to withdraw, without stating any reasons or further analysis.

The supplemental no-merit report concludes that this issue lacks arguable merit. It correctly states that, in the absence of a stated reason by the circuit court for its decision, this court will search the record for reasons to sustain a discretionary decision such as this. The supplemental report concludes that the circuit court gave Hill an adequate opportunity to express his concerns, and that its decision can reasonably be interpreted as a conclusion that Hill was mainly upset about the outcome of his trial, and had not shown that there was an ongoing conflict that would impede the presentation at sentencing. The report states that the court's "poor conduct" in its "demeaning and blame-assigning comments" do not establish an erroneous exercise of discretion.

We agree with the analysis in the supplemental no-merit report. Hill's concerns were focused mainly on past events that did not directly implicate the sentencing proceeding. The circuit court's comments, while not responsive to the motion, do not demonstrate that its decision was erroneous.

The no-merit report addresses Hill'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 Pucek is relieved of further representation of Hill 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