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DISTRICT II

May 17, 2023

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Winnebago County Courthouse
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David Hall, #457441
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You are hereby notified that the Court has entered the following opinion and order:

2021AP1104-CRNM State of Wisconsin v. David Hall (L.C. #2018CF207)

Before Gundrum, P.J., Neubauer and Grogan, 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).

David Hall appeals from a judgment convicting him of numerous crimes. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Hall filed a response. Counsel then filed two supplemental no-merit reports. After reviewing the Record, counsel's reports, and Hall's response, we

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

conclude there are no issues with arguable merit for appeal. We summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Hall was convicted following a jury trial of four counts of first-degree recklessly endangering safety, two counts of felony bail jumping, and one count each of attempted first-degree intentional homicide, possession of a firearm by a felon, and attempting to flee/elude a traffic officer—all as a repeater.[2] He was accused of shooting at some men following a disturbance outside an apartment complex in the City of Appleton. A stray bullet entered two apartments, endangering those inside. Hall, along with his brother, then fled in Hall's vehicle from a responding police officer. For his actions, the circuit court imposed an aggregate sentence of sixteen years of initial confinement and eleven years of extended supervision. This no-merit appeal follows.

The no-merit reports address whether the evidence at Hall's trial was sufficient to support his convictions. When reviewing the sufficiency of the evidence, we may not substitute our judgment for that of the jury "unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Our review of the trial transcripts persuades us that the State produced ample evidence to convict Hall of his crimes. That evidence included testimony from Hall's own sister who identified him as the shooter. It also included evidence of Hall's flight immediately after the shooting. Additionally, a witness reported seeing someone from Hall's vehicle throw a

[2] The circuit court later dismissed one of the counts of first-degree recklessly endangering safety on the ground that it was a lesser-included offense of attempted first-degree intentional homicide.

black object into the river, and police subsequently recovered from there a firearm matching the one used in the shooting.

The no-merit reports also address whether the circuit court properly exercised its discretion at sentencing. The Record reveals that the court's sentencing decision had a "'rational and explainable basis.'" ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In fashioning its sentence, the court considered the seriousness of the offenses, Hall's character, and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, the sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper[.]" ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There is no indication that the court relied on inaccurate information at sentencing.[3] Accordingly, we agree with counsel that a challenge to Hall's sentence would lack arguable merit.

Finally, the no-merit reports address a number of other issues, including: (1) whether Hall received a prompt judicial review of probable cause following his arrest; (2) whether the circuit court had jurisdiction over him; (3) whether the court properly bound Hall over for trial; (4) whether Hall's speedy trial demand was honored; (5) whether Hall knowingly, voluntarily,

[3] Hall suggests that the sentencing court erred in noting that a witness saw him (as opposed to someone in his vehicle) throw the gun into the river. However, the identification of the thrower was not a fact relied on by the court in determining Hall's sentence. Rather, the focus of the sentence was to protect the public from Hall's dangerous behavior.

and intelligently stipulated to elements of the charged offenses;[4] (6) whether the jury selected to hear Hall's trial was impartial; (7) whether opening statements/closing arguments/evidentiary rulings were proper; (8) whether the jury instructions/verdict forms were proper; (9) whether the court appropriately responded to jury questions during deliberation; and (10) whether the jury's review of one witness's written statement was improper or prejudicial. We agree with counsel that these issues do not have arguable merit for appeal, and we will not discuss them further.

As noted, Hall filed a response. In it, he touches upon some of the issues already addressed, which we will not discuss again. He also presents several non-issues in the form of irrelevant complaints and conclusory assertions.[5] Additionally, Hall appears to accuse the circuit court judge of bias for asking too many questions at trial.[6] Likewise, he appears to accuse his trial counsel of ineffective assistance for: (1) not calling two neighbor witnesses regarding their description of the shooter; (2) failing to present certain evidence regarding his activities that day as a potential alibi; and (3) not effectively challenging incriminating phone calls he made while in jail.

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[4] Hall stipulated that if he were found guilty of a criminal offense alleged in the case, then he could be found guilty of a corresponding bail jumping. In addition, he stipulated that he had a previous felony conviction that precluded him from lawfully possessing a firearm.

[5] For example, Hall complains that his case was handled by the Appleton Police Department instead of Winnebago County law enforcement. He further complains that he was not tested for gunshot residue, which, according to the State's firearm-examiner witness, is no longer a commonly accepted test due to its unreliability. Additionally, Hall asserts, without any Record support, that he was not prepared for trial and that the jury was not paying attention during the testimony of one witness.

[6] Hall also faults the circuit court for not discussing the details of the State's last plea offer before trial. However, this information was already known to Hall via his trial counsel. According to the no-merit reports, "[appellate] counsel recalls Hall acknowledging that he and his [trial] attorney discussed all offers documented in the file." Moreover, "Hall made it clear to [appellate] counsel that he always wanted a trial and he would not have accepted any offer."

We are not persuaded that Hall's response presents an issue of arguable merit. As explained in the no-merit reports, the circuit court judge is legally permitted to ask questions of witnesses during trial. *See* ***State v. Carprue***, 2004 WI 111, ¶40, 274 Wis. 2d 656, 683 N.W.2d 31. There is no indication that the court abused that authority and improperly influenced the jury here.[7] There is also no indication that the neighbor witnesses or evidence of Hall's activities that day would have made a difference at trial. Again, a person who knew Hall well—his own sister—identified him as the shooter. Other witnesses—including Hall's own mother—also placed Hall at the scene in their initial statements to police.[8] Moreover, police discovered Hall fleeing from the scene immediately after the shooting. Collectively, this evidence eviscerates any alibi defense Hall may be attempting to raise now. Finally, Hall develops no argument for how counsel could have effectively challenged the incriminating phone calls he made while in jail. Thus, we will not discuss the issue further.

Our review of the Record—including Hall's waiver of his right to testify—discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit reports, affirms the judgment of conviction, and discharges appellate counsel of the obligation to represent Hall further in this appeal.

[7] Indeed, the circuit court expressly instructed the jury to disregard any impression it may have had regarding the circuit court's opinion of the defendant's guilt or non-guilt. We presume that the jury followed this instruction.

[8] At trial, several witnesses backtracked from their initial statements, insisting that they could no longer remember what they saw. In his recorded jail calls, Hall indicated that he wished his sister would also change her statement.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Erica L. Bauer is relieved of further representation of David Hall in this appeal. *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