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DISTRICT I

August 1, 2023

To:

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Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
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Hector Luis Delvalle 434697
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You are hereby notified that the Court has entered the following opinion and order:

2021AP213-CRNM State of Wisconsin v. Hector Luis Delvalle (L.C. # 2017CF3655)

Before White, C.J., Donald, P.J., and Dugan, J.

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).

Hector Luis Delvalle appeals a judgment, entered upon a jury's verdicts, convicting him of multiple domestic violence related charges. His appellate counsel, Angela Conrad Kachelski, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22) and *Anders v. California*, 386 U.S. 738 (1967).¹ Delvalle received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record as mandated by *Anders*, we summarily affirm the judgment

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

because there is no arguable merit to any issue that could be pursued on appeal. *See* WIS. STAT. RULE 809.21.

According to the complaint, in August of 2017, police were dispatched to a home shortly after midnight. Upon arrival, they spoke with the victim in this matter who said that Delvalle is the father of two of her children. The victim heard someone knocking at the door, opened it, and saw Delvalle. She told Delvalle to leave, but he grabbed her by the neck, pulled her outside the home, and closed the door. The victim reported that Delvalle beat her, dragged her down several stairs off the porch, and told her he was going to kill her and that a restraining order was not going to stop him. Eventually the victim's aunts were able to push Delvalle off of the victim. He left before the police arrived. Sutures were required to close a cut above the victim's eye.

The complaint additionally alleged that earlier in 2017, an officer served Delvalle with a domestic abuse injunction. The injunction ordered Delvalle to avoid contacting the victim. The injunction was in effect when the underlying crimes were committed. The complaint also stated that in February of 2017, the court imposed domestic abuse assessments against Delvalle in two separate cases. As a condition of Delvalle's probation in those cases, he was ordered to have no contact with the victim in this matter. This condition was in effect when the underlying crimes occurred.

The State charged Delvalle with the following crimes: (1) battery by a person subject to certain domestic abuse injunctions as a domestic abuse repeater and with a domestic abuse assessment; (2) substantial battery as a domestic abuse repeater and with a domestic abuse assessment; (3) disorderly conduct as a domestic abuse repeater and with a domestic abuse assessment; and (4) intentionally contacting the victim after a court order for a misdemeanor

conviction as a domestic abuse repeater. The case proceeded to trial and a jury found Delvalle guilty of all of the charges. The trial court ordered Delvalle to serve sentences totaling fifteen years and nine months of imprisonment.

The no-merit report addresses—among other things—various pretrial rulings, the sufficiency of the evidence to support the convictions, and whether the trial court properly exercised its discretion when it sentenced Delvalle. This court is satisfied that the no-merit report properly analyzes the issues it raises as being without merit. Additionally, this court has concluded that no procedural errors occurred prior to trial.

We will, however, briefly elaborate on the trial court’s denial of trial counsel’s motion to withdraw, which was made on the day Delvalle’s trial was to begin. There are three factors to consider in evaluating whether a trial court properly denied a motion for the withdrawal and substitution of counsel:

(1) the adequacy of the court’s inquiry into a defendant’s complaint; (2) the timeliness of the motion; and (3) whether the alleged conflict between a defendant and his [or her] attorney was so great that it likely resulted in a total lack of communication that prevented an adequate defense and frustrated a fair presentation of the case.

State v. Wanta, 224 Wis. 2d 679, 702-03, 592 N.W.2d 645 (Ct. App. 1999).

In making his motion, trial counsel explained the communication had broken down between him and Delvalle when Delvalle refused to speak with him during a meeting to prepare for trial. According to trial counsel, Delvalle’s family had contacted a new attorney who stood ready to represent Delvalle pending resolution of the motion to withdraw. The State objected to

the motion explaining that three citizen witnesses, including the victim, were present in court and ready to testify.

The trial court ultimately denied the motion to withdraw explaining that there was no indication that communication had broken down prior to the final meeting. The trial court added:

Essentially, Mr. Delvalle made the decision not to talk and work with [trial counsel] when [trial counsel] came to meet with him for the final pretrial meeting, and that's his decision. We have citizen witnesses who are here ready for a trial, and this is the only case set for trial today now on the [c]ourt's calendar.

Trial counsel subsequently told the trial court that “because of the break off of communication between he and I, I don't feel I am ready or fully prepared to try his case.” Delvalle stated that he was frustrated with trial counsel for not doing what Delvalle said, at which point, the trial court explained that attorneys are required to exercise professional judgment and are not required to comply with every demand made by a client. The trial court concluded: “[I]f we let defendants throw a wrench in a trial schedule simply by refusing to talk to their attorney shortly before a trial starts, we'd have a hard time trying cases.” When given the opportunity to proceed *pro se* or with trial counsel, Delvalle told the trial court he wished to proceed with trial counsel.

“Mere disagreement over trial strategy does not constitute good cause to require the court to permit an appointed attorney to withdraw.” *Id.* at 703. “In addition, the right to counsel cannot be manipulated in order to obstruct the processing of a case by the courts or to interfere with the administration of justice.” *Id.* We conclude the trial court adequately analyzed the

withdrawal motion before denying it. There would be no arguable merit in further pursuit of this issue.²

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Delvalle further in this appeal.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Angela Conrad Kachelski is relieved of further representation of Hector Luis Delvalle in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals

² After the jury arrived at its verdicts, trial counsel again moved to withdraw. At that point, the trial court granted trial counsel's motion. A newly appointed attorney represented Delvalle at sentencing.