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DISTRICT II

January 31, 2024

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Circuit Court Judge
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Clerk of Circuit Court
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Luis A. Curet #643723
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2020AP469-CRNM State of Wisconsin v. Luis A. Curet (L.C. #2017CF1798)

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).

Attorney Patrick Flanagan, as appointed counsel for Luis A. Curet, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). In response to this court's orders, counsel has also filed two supplemental no-merit reports. At each stage of the process, Curet has submitted numerous documents in response. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our

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

independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

After a jury trial, Curet was convicted of one count each of second-degree sexual assault, intimidation of a victim, threat to a law enforcement officer, resisting an officer, and intentionally contacting a victim after a court order. The court imposed concurrent sentences, with the controlling sentence as fifteen years of initial confinement and fifteen years of extended supervision on the sexual assault count.

The no-merit report addresses whether the evidence was sufficient. 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 in detail here, the testimony of the victim, officers, and Curet, together with photographs and other evidence, was sufficient. This evidence was not inherently incredible and, if believed by the jury, was sufficient to satisfy the elements of each count. There is no arguable merit to this issue.

The no-merit report addresses whether there is arguable merit to a claim that the circuit court erred by denying Curet's motions for a mistrial. Each motion followed an instance where a witness referred in some way to Curet having previously been arrested, in jail, or on supervision. However, the jury was later made aware from Curet's own testimony that he had previously been convicted of crimes. Accordingly, there is no arguable merit to this issue because any error in denying a mistrial was harmless.

The no-merit report addresses Curet's sentences. The sentences are within the legal maximums. 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.

Curet's responses raised numerous issues. We briefly address some of those here.

Curet asserts that his trial counsel was ineffective by not pointing out to the jury that his DNA was not found on the victim. There is no arguable merit to this issue because the jury was told that the victim declined to allow an examination that might have found such DNA, and therefore the absence of this DNA evidence at trial had little persuasive value.

Curet asserts that there is a question about whether the jury received the correct instructions. There is no arguable merit to this because, although the court made an error during opening instructions, it then corrected the error.

Curet asserts that the victim was improperly allowed to review her statement and the recording of a 911 call before trial. However, he does not explain why this would have been improper.

Curet asserts that the entire 911 call should have been played to the jury, but he does not explain what other parts should have been played or how they would have been helpful to the defense.

Curet asserts that the victim should not have been allowed to be present in the courtroom for the State's opening statement and the testimony before she testified. However, Curet does not explain what legal basis there would be to exclude the victim from the courtroom.

Curet asserts that his trial counsel was ineffective regarding a stipulation that Curet agreed to in which he admitted being aware of an order that he not contact the victim. Curet asserts that he was pressured by counsel and counsel did not adequately explain the stipulation. However, Curet does not provide any basis to believe that, if he had not entered the stipulation, he would not still have been convicted of contacting the victim.

Curet asserts that the judge was biased against him at sentencing. However, the facts that Curet relies on do not establish a legal claim on this basis.

Curet asserts that his trial counsel was ineffective by not calling an alibi witness, but he does not explain what the witness would have said, and therefore he has not shown any possible prejudice.

Curet asserts that his trial counsel had a conflict of interest because he went to law school with the prosecutor. There is no legal basis to argue that this, by itself, is a conflict of interest.

Curet asserts that his trial counsel was ineffective by not filing a motion on the ground that police failed to read him his rights and asked questions without his lawyer present. However, Curet does not identify any statements he made that could have been suppressed.

Curet asserts that the alternate juror was chosen as alternate because of her apparent agreement with Curet's argument and her ethnicity. However, he presents no facts from which it could be inferred that the process was not random.

Curet has also raised many additional issues in his submissions to the court. All of them have been considered, and none have arguable merit.

Finally, there were two issues that we ordered Curet's current counsel to review further. One of them was whether Curet's trial counsel was ineffective by not calling at trial a witness who would have testified that Curet did not resist arrest. In current counsel's supplemental no-merit report, he provided police reports describing statements made by this witness that would have been unfavorable to Curet. We agree with current counsel's conclusion that there is no basis to argue that it was not a reasonable strategic decision not to call this witness.

The second issue related to a statement provided by a prison inmate regarding what he claimed were attempts by police to have him testify falsely against Curet. Without attempting to address the details of this claim here, we are satisfied that the issue lacks arguable merit for the reasons provided in counsel's second supplemental no-merit report.

Our review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgments of conviction are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Flanagan is relieved of further representation of Curet 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