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DISTRICT I

February 6, 2024

To:

Hon. Michael J. Hanrahan
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Marcella De Peters
Electronic Notice

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Ambioris E. Torres-Espinal 474585
c/o Region Unit Agent
3073 S. Chase Avenue
Milwaukee, WI 53207

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

2021AP1570-CRNM State of Wisconsin v. Ambioris E. Torres-Espinal
(L.C. # 2018CF3219)

Before White, C.J., Geenen and Colón, 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).

Ambioris Torres-Espinal appeals a judgment convicting him of one count of possession with intent to deliver heroin (under three grams) and one count of possession with intent to deliver one to five grams of cocaine, both as second or subsequent offenses and as a habitual criminal. His appellate counsel, Marcella De Peters, has filed a no-merit report pursuant to WIS.

STAT. RULE 809.32 (2021-22),¹ and *Anders v. California*, 386 U.S. 738 (1967). Torres-Espinal received a copy of the report, was advised of his right to respond, and has responded. We have independently reviewed the record, the no-merit report, and the response, as mandated by *Anders*. We conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm.

The State charged Torres-Espinal with one count of possession with intent to deliver heroin (under three grams) and one count of possession with intent to deliver one to five grams of cocaine both as second or subsequent offenses and as a habitual criminal. The complaint alleged that on July 7, 2018, Milwaukee police conducted a traffic stop of a Jeep driven by Torres-Espinal after determining that the license plate was registered to a different vehicle. The complaint states that the Jeep failed to make a complete stop at a stop sign, prompting police to run a search of the license plate. Police also determined that the Jeep was listed as stolen. Police searched the vehicle and found a small jewelry box containing corner cuts of heroin and cocaine. The heroin weighed 1.76 grams, and the cocaine weighed 4.61 grams.

Torres-Espinal moved to suppress any evidence discovered as a result of the police search of the vehicle. Following a hearing on the motion, the trial court determined that Torres-Espinal did not have standing to object to the search. The trial court also denied the motion on its merits.

The matter proceeded to trial where multiple witnesses, including law enforcement and an expert for the defense, testified. Torres-Espinal's theory of defense was that he was a self-

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

employed mechanic working out of an alley and that he was test driving the Jeep for a customer prior to making repairs. In short, Torres-Espinal's defense theory was that the Jeep did not belong to him and therefore, the contents of the Jeep—the drugs—did not belong to him. The jury found Torres-Espinal guilty as charged. The trial court sentenced Torres-Espinal to four years of initial confinement and four years of extended supervision on each count, with the sentences concurrent to one another. This no-merit report follows.

Appellate counsel's no-merit report addresses three issues: (1) whether the trial court erroneously denied Torres-Espinal's motion to suppress; (2) whether the evidence presented at trial was sufficient to sustain the convictions; and (3) whether the trial court properly exercised its sentencing discretion.

The trial court denied Torres-Espinal's suppression motion on the grounds that he did not have standing to challenge the search. "[S]tanding exists when an individual has a reasonable expectation of privacy" in the area that was searched. *State v. Bruski*, 2007 WI 25, ¶22, 299 Wis. 2d 177, 727 N.W.2d 503. The person challenging the search "bears the burden of proving that he or she had a reasonable expectation of privacy." *Id.*

In evaluating whether there was a legitimate expectation of privacy, the trial court may consider several factors, including whether the accused "had a property interest in the premises" that was searched and whether the accused had "complete dominion and control" over the premises and the "right to exclude others." *Id.*, ¶24 (citation omitted). Furthermore, the trial court is to consider the totality of the circumstances in making this determination. *Id.*

Here, the trial court determined that Torres-Espinal lacked a reasonable expectation of privacy based on the totality of the circumstances. Specifically, the trial court noted that the Jeep

was stolen; Torres-Espinal was evasive when police asked about the vehicle's owner; Torres-Espinal did not have any identifying information regarding the owner, despite claiming that the owner was a customer; and Torres-Espinal had no documentation proving that he was hired as a mechanic for the vehicle. The trial court did not erroneously exercise its discretion.

With regard to the merits of the suppression motion, we agree with counsel that this issue also lacks arguable merit. The evidence at the suppression hearing, which the trial court found credible, established that police had reasonable suspicion to stop Torres-Espinal's vehicle for a traffic violation and for having license plates that did not match the car. Police also determined that the vehicle was stolen. When police approached Torres-Espinal, he was evasive, gave contradictory responses, and had no proof that he was hired for repairs on the car. There would be no merit to an argument challenging the constitutionality of police actions in conducting the stop and search of the vehicle.

The no-merit report next addresses whether the evidence presented at trial was sufficient to support the convictions. When this court considers the sufficiency of evidence presented at trial, we apply a highly deferential standard. *State v. Kimbrough*, 2001 WI App 138, ¶12, 246 Wis. 2d 648, 630 N.W.2d 752. We “may not reverse a conviction unless the evidence, viewed most favorably to the [S]tate and the conviction, is so insufficient 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, 501, 451 N.W.2d 752 (1990). The finder of fact, not this court, considers the weight of the evidence and the credibility of the witnesses and resolves any conflicts in the testimony. *Id.* at 503-04.

Here, the jury heard testimony from law enforcement regarding the stop and Torres-Espinal's conduct. The jury was entitled to make credibility determinations of the witnesses and evidence, and was therefore free to disregard Torres-Espinal's theory of defense and to find the State's evidence credible. We agree with appellate counsel's determination that there is no arguable merit to challenging the sufficiency of the evidence supporting the verdict.

With regard to the trial court's sentencing decision, we note that sentencing is a matter for the trial court's discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, the trial court should consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. It should also determine which objective or objectives are of greatest importance. *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the trial court must consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, as well as additional factors it may wish to consider. *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the trial court's discretion. *Id.* Our review of the record confirms that the trial court thoroughly considered the relevant sentencing objectives and factors. The sentence the trial court imposed is within the range authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public's sentiment, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There would be no arguable merit to a challenge to the trial court's sentencing discretion.

In his response, Torres-Espinal alleges prosecutorial misconduct on the ground that the State presented insufficient and inaccurate evidence. He also alleges ineffective assistance of counsel on the ground that counsel failed to properly establish the lack of a link between Torres-Espinal and the evidence seized. Our review of the record discloses no evidence of prosecutorial misconduct or ineffective assistance of counsel. The State presented evidence of the traffic stop and the evidence recovered from the search of the vehicle. Torres-Espinal's defense counsel sought to dissociate Torres-Espinal from the vehicle and the contents found inside, but the jury was free to disregard that theory. As noted, it is the jury's responsibility to weigh the credibility of the evidence and resolve any conflicts. *See Poellinger*, 153 Wis. 2d at 503-04.

To the extent Torres-Espinal raised issues not addressed in this decision, we conclude that our independent review of the record reveals no other potential issues of arguable merit. Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Torres-Espinal 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 Marcella De Peters is relieved of further representation of Ambioris Torres-Espinal 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