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DISTRICT IV

October 10, 2024

To:

Hon. Richard A. Radcliffe
Circuit Court Judge
Electronic Notice

Laura Endres
Clerk of Circuit Court
Monroe County Courthouse
Electronic Notice

Michael J. Herbert
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Stephen Earl Henry
509 Hill Street
Sparta, WI 54656

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

2023AP958-CRNM State of Wisconsin v. Stephen Earl Henry (L.C. # 2021CF658)

Before Kloppenburg, P.J., Graham, and Taylor, 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 Michael Herbert, as appointed counsel for Stephen Henry, 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). Counsel provided Henry with a copy of the report and advised Henry of his right to file a response, and this court also informed Henry of his right to file a response. Henry has not responded. We conclude that this case is appropriate for summary disposition. See WIS. STAT.

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

RULE 809.21. After our 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, Henry was convicted of one count of false imprisonment, one count of misdemeanor battery, and two counts of disorderly conduct. On the false imprisonment and disorderly conduct convictions, the circuit court withheld sentence and placed Henry on two years of probation for each conviction. On the battery conviction, the court imposed and stayed a jail sentence of ninety days and placed Henry on two years of probation.

We first consider whether the evidence was sufficient to support Henry's convictions. The no-merit report fails to address this issue. We affirm the verdicts 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 evidence of statements that the victim made in writing, and to police and others, together with photographs, was sufficient to support Henry's convictions. This evidence was not inherently incredible and, if believed by the jury, was sufficient to satisfy all of the elements of the four counts on which Henry was convicted. There is no arguable merit to this issue.

The no-merit report addresses whether the circuit court erred by allowing admission of statements made by the complaining witness to the police and others. The court admitted these statements as prior inconsistent statements, because the witness's statements to the police and others were inconsistent with the witness's testimony at trial. At trial, the witness mainly

testified that she did not recall relevant events, but at one point she denied having been in a “physical argument” with Henry. This trial testimony contradicts her pretrial statements and clearly allowed her prior statements describing such an event to be admissible under WIS. STAT. § 908.01(4)(a)1. There is no arguable merit to this issue.

The no-merit report also addresses whether admission of the above evidence of prior inconsistent statements violated Henry’s right to confront the witnesses against him. At trial, the circuit court noted a potential confrontation clause problem when, after the witness had already been released from her subpoena at trial, the State proposed to show a video of a statement by the witness to police. At that point, the witness could no longer be cross-examined about the video statement. The court ultimately concluded that the cross-examination of the witness before the playing of the video was sufficient. We note that the substantive content of the video statement was not materially different from her other prior, non-video, statements about which she testified and on which she was subject to cross-examination at trial. We also note that her testimony about her prior, non-video, statements was largely favorable to the defense, in that she mainly denied recollection of the events at issue. In that context, it is not apparent what might be accomplished with additional cross-examination. There is no arguable merit to this issue.

The no-merit report addresses whether the circuit court erred by denying Henry’s motion for a mistrial. The motion was based on portions of the video evidence containing the prior statements of the witness in which she referred to Henry’s prior criminal history and to numerous other acts by Henry. The court denied the mistrial after concluding that other, less drastic remedies would be sufficient. The court applied the proper standard and reached a reasonable result. There is no arguable merit to this issue.

The no-merit report fails to address Henry's sentences. However, the imposed sentence and probation terms 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 circuit 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 Herbert is relieved of further representation of Henry 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