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June 11, 2013

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

2013AP482-CRNM State of Wisconsin v. Vondelle Montez Over
(L.C. # 2011CM5573)

Before Mangerson, J.¹

Counsel for Vondelle Montez Over has filed a no-merit report concluding there is no arguable basis for Over to challenge his conviction and sentences for violating a harassment injunction. Over was advised of his right to respond to the report and has not responded. Upon this court's independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), no issue of arguable merit appears.

A jury convicted Over of violating a harassment injunction that prohibited him from having contact with Rhonda C. Before the jury trial began, Over informed the court that he did not feel his counsel was properly representing him. The court then reviewed with Over the charges, possible defenses and jury instructions. After a recess and further discussion with his counsel, Over told the court that he wished to proceed with his counsel. The record discloses no basis for believing Over's counsel's performance was prejudicially deficient. Nothing suggests that Over had a valid defense to the charge.

The State presented sufficient evidence to support the jury's verdict. Police officer Shawin Humitz testified he responded to a call for violation of a restraining order and spoke with Rhonda and Toni C. Humitz authenticated exhibits 1 and 2, the harassment injunction and an affidavit of service of the injunction on Over. The injunction required Over to avoid contact with Rhonda's residence or any place temporarily occupied by her. Rhonda testified that Over and his brother came to her house at 11:00 p.m. and knocked on her door. She told Over to leave. A discussion ensued about whether Over's brother could visit Rhonda's children. Over attempted to shove his way inside, but the children intervened and got Over and his brother to go back to the street. Toni testified that Over stated he was not going to leave and wanted to see his nephews. He further testified that Over punched him in the face, threw some chairs on the porch and threatened to cut his tires and break windows. The defense presented no witnesses. The State's witnesses and exhibits presented sufficient evidence to allow the jury to find that an

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

injunction had been issued and that Over knew of the injunction and intentionally violated its terms.

Over told the court at sentencing and apparently told his appellate counsel that he believes inconsistencies in Rhonda's and Toni's testimony compelled the jury to find their testimony incredible. While Toni's testimony added details regarding Over's punching him in the face and throwing items on the porch, both witnesses testified that Over came to Rhonda's residence in violation of the injunction. Any inconsistencies regarding the details of the altercation were matters for the jury to consider. The jury, not this court, determines the credibility of witnesses and resolves any conflicts in the evidence. *State v. Hirsch*, 2002 WI App 8, ¶33, 249 Wis. 2d 757, 640 N.W.2d 140.

The record discloses no potential issue regarding Over's decision not to testify. Over apparently told his appellate counsel that his trial counsel advised him not to testify. However, the court's colloquy with Over established that the ultimate decision rested with Over, not his attorney. The court advised Over of his right to testify and established that Over's decision not to testify had not been prompted by any threats or promises. Moreover, Over's counsel's advice constituted a reasonable trial strategy because the jury could have been informed of Over's eight prior convictions had he testified.

Finally, the record discloses no arguable basis for challenging the sentence. The court imposed a sentence of ninety days in jail, which amounted to time served. In addition to the ninety-day sentence, the court could have imposed a \$1,000 fine. Because the ninety days was served awaiting trial, any issue regarding the length of the jail term is moot. See *State v. Hungerford*, 76 Wis. 2d 171, 179, 251 N.W.2d 9 (1977).

This court's independent review of the record discloses no other potential issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that attorney Brian Hagner is relieved of his obligation to further represent Over in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals