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DISTRICT I

July 18, 2013

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

2013AP377-NM In the interest of Vernell D. H., a person under the age of 17: State of Wisconsin v. Vernell D. H. (L.C. # 2011JV132B)

Before Kessler, J.[1]

Vernell H. appeals a judgment finding him delinquent for one count of armed robbery with threat of force, as a party to a crime. Appointed appellate counsel Dennis Weden filed a no-merit report. *See* ***Anders v. California***, 386 U.S. 738, 744 (1967), and WIS. STAT. RULE 809.32 (2011-12).[2] Vernell H. was informed of his right to respond, but he has not done so. After reviewing the no-merit report and conducting an independent review of the record, we conclude

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12).

[2] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

that there are no arguably meritorious appellate issues. Therefore, we summarily affirm the judgment.

The no-merit report addresses whether there is sufficient evidence to support the verdict. When reviewing the sufficiency of the evidence, we look at whether "'the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.'" ***State v. Zimmerman***, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (quoting ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990)).

The victim testified at trial that Vernell H. and another young man robbed him late in the evening when he was waiting for the bus to go to work. They demanded money and other items from him, threatening him with a small, black gun. The victim further testified that he saw Vernell H. the day after the robbery walking down the street and recognized his face and his clothes, which were the same clothes Vernell H. had been wearing the night before. The victim called the police, who arrived shortly thereafter to investigate. Police Officer Gary Imann testified that he and his partner conducted a field interview of Vernell H. and a young man with him, who the victim said was also involved in the robbery. The other boy admitted that he had a gun, so the police retrieved it from his back pocket. Officer Imann testified that he noticed that the gun matched the victim's description of the gun used in the robbery. Officer Imann testified that he then showed the victim the gun, and the victim stated that it was the weapon that had been used during the robbery. Vernell H.'s parents also testified, providing an alibi; they said he had been home the evening the robbery occurred.

When more than one inference can be drawn from the evidence, the inference that supports the verdict must be followed, unless the evidence is incredible as a matter of law. ***State v. Alles***, 106 Wis. 2d 368, 377, 316 N.W.2d 378 (1982). Despite the alibi provided by Vernell H.'s parents, the testimony by the victim was more than sufficient to support the verdict finding Vernell H. delinquent for armed robbery, as a party to a crime. The victim identified Vernell H. as the robber, described how the robbery occurred, and explained that he called the police when he recognized Vernell H. in the same area the next day. A police officer testified that Vernell H.'s companion had a gun matching the victim's description when he was questioned the day after the robbery. We conclude that there is no arguable merit to a challenge to the sufficiency of the evidence.

The no-merit report addresses whether the circuit court properly exercised its discretion in placing Vernell H. in the Serious Juvenile Offender Program for five years. The circuit court considered the gravity of the offense, Vernell H.'s character, the need to protect the community and other standard sentencing factors. The circuit court explained on the record its thoughts about various placements for Vernell H. The court concluded that Vernell H. could not live at home because he continued to get in trouble, he had not yet faced up to his problems, and his mother continued to minimize his short-comings. The circuit court explained that Vernell H.'s parents would not be able to provide the necessary support and supervision for Vernell H. to turn his life around. The circuit court also took note of the fact that professionals who had evaluated Vernell H. for potential placement in less secure settings outside the home had concluded that he was not appropriate for their programs because he did not have enough motivation to change. The circuit court's decision to place Vernell H. in the Serious Juvenile Offender Program was reasonable based on the facts of this case as applied to the appropriate law in accordance with the

framework set forth in ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, we conclude that there is no arguable merit to a claim that the circuit court misused its sentencing discretion.

Our independent review of the record reveals no potential claims of arguable merit. Therefore, we conclude that further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32. We affirm the judgment and relieve Attorney Dennis Weden of further representation of Vernell H.

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

IT IS FURTHER ORDERED that Attorney Dennis Weden is relieved of any further representation Vernell H. in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals