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**DISTRICT I**

July 15, 2015

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

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2012AP2795-CRNM      State of Wisconsin v. Muhannad M. Salim (L.C. #2010CF3127)

Before Curley, P.J., Kessler and Bradley, JJ.

Muhannad M. Salim appeals a judgment convicting him of four felonies and two misdemeanors after a jury trial. Appellate counsel, Glen B. Kulkoski, filed a very comprehensive and detailed forty-seven page no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)<sup>1</sup> and *Anders v. California*, 386 U.S. 738, 744 (1967). Salim filed a response. After considering the no-merit report and the response, and after

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

conducting an independent review of the record, we conclude there are no arguably meritorious appellate issues that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

After a multiple-day jury trial, Salim was convicted of one count of felony burglary, two counts of felony stalking, one count of felony bail jumping, one count of violating a domestic abuse injunction, a misdemeanor, and one count of misdemeanor criminal damage to property. He was acquitted of one count of felony intimidation of a witness. In the no-merit report, counsel reviewed the proceedings in the circuit court in chronological order. We commend counsel on the thoroughness of his review. This decision will address potential issues that could have been raised, rather than follow the chronological format of counsel's no-merit report.

We first address whether there would be arguable merit to a claim that the evidence was insufficient to support the jury's 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)).

During a trial that lasted from June 29, 2011 until July 8, 2011, L.S. testified about Salim's repeated attempts to contact her in violation of the restraining order and his acts of intimidation and aggression. L.S. testified that she and Salim were married, but in the process of getting divorced. She testified that they had three young children and that her son, M.B., who was eighteen years old, also lived with them before they separated. L.S. testified that Salim

phoned her hundreds of times per week after the restraining order was issued, that he drove by her home, sometimes switching cars and wearing hats or wigs to conceal his identity, that he showed up at her work and the homes of her friends repeatedly, looking for her, and that he followed her in his car when she drove places. She testified that he wrote hundreds of letters to her and the children threatening to harm himself or commit other acts of violence and that she found him trying to look in through the windows of her home. L.S. also testified about the day that Salim broke into her home, took her and poisoned the children's pet fish. She testified that he also repeatedly contacted her place of employment, a hospital, attempting to get her fired by accusing her of stealing drugs.

Multiple witnesses testified to the same effect, including: M.B., who is L.S.'s eighteen-year-old son; Karen Predo, a friend of both L.S. and Salim who often cared for the children; Jon Peppey, L.S.'s uncle; Kenneth Forray, a Racine County Deputy Sheriff; James Muller, an investigator with the Racine County Sheriff's Office; and John Dobrzynski, head of security at St. Luke's Medical Center where L.S. worked. The no-merit report thoroughly summarizes all of this testimony. We agree with the report that the evidence showing that Salim committed the crimes with which he was charged was overwhelming. There would be no arguable merit to a claim that the evidence was insufficient to support the verdict.

We next address whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion. The circuit court sentenced Salim to six years of imprisonment for burglary, with three years of initial confinement and three years of extended supervision. The circuit court sentenced Salim to consecutive terms of three years and six months of imprisonment for each count of stalking, with two years and six months of initial confinement and one year of extended supervision. The circuit court sentenced Salim to a

consecutive term of two years of imprisonment for bail-jumping, with one year of initial confinement and one year of extended supervision. For the misdemeanor charges, the circuit court sentenced Salim to nine months in jail on each count, to be served concurrently to the felony charges.

After receiving notice from the Department of Corrections that the term of initial confinement for the stalking charges exceeded the statutory maximum, the circuit court resentenced Salim. The circuit court explained that the reasons for its initial sentence still applied and that its intention was for Salim to serve a global term of nine years of initial confinement and five years of extended supervision, for a total prison sentence of fourteen years. The circuit court explained that it was going to amend the judgment of conviction to reduce the time of initial confinement on the stalking convictions by one year each, and increase the initial incarceration on the burglary and bail jumping convictions by one year each to effect the same aggregate term of initial incarceration that it originally imposed.

In framing Salim's sentence, the circuit court explained at the first sentencing hearing that it considered the seriousness of the offenses, Salim's character, and the need to protect the public and the victims. The circuit court placed great weight on the seriousness of the crimes and aggravating circumstances, noting that Salim manipulated and terrorized L.S. and their children, including Salim's stepson, by threatening violence and suicide, making incessant phone calls, breaking into their house after the domestic abuse injunction had been issued, and attempting to get L.S. fired from her job by filing anonymous false complaints about her. The circuit court looked at other aspects of Salim's character, including the fact that he blamed others for the situation, minimized his own role and was unwilling to see the reality of his actions. The circuit court concluded that Salim needed to be incarcerated to protect L.S., the children and

society, and that he also needed to be punished for the suffering he inflicted on L.S. and the children. The circuit court explained its application of the various sentencing considerations 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. There would be no arguable merit to a challenge to the sentence on appeal.

Salim argues in his response that he received ineffective assistance of trial counsel based on five different acts or omissions of counsel. A claim of ineffective assistance of counsel has two parts: the defendant must show that his lawyer's performance was deficient and the defendant must show that his defense was prejudiced by his lawyer's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

First, Salim contends his lawyer should have moved to suppress L.S.'s clothing, which Police Officer Jutiki X found in Salim's car when he arrested Salim for violating the domestic abuse restraining order. Officer X testified that when he arrived at the Milwaukee County Mental Health Complex to follow up on an unrelated matter, Officer Todd Putz approached him, explaining that Salim was seeking information about L.S. After discovering that Salim was wanted for violating a domestic abuse restraining order, Officer X arrested Salim. During an inventory search of Salim's vehicle, which had been parked in a no-parking zone next to where they were standing and had to be towed when Salim was arrested, Officer X testified that he saw hats and a wig in the back seat and discovered L.S.'s clothing in the trunk, which had been taken from her home. Officer X also testified that he searched the vehicle before it was towed to ensure that nothing valuable would be taken from the car. Because the police found the stolen clothing when they were conducting a lawful inventory search of Salim's car incident to his

arrest and the subsequent towing of his vehicle, there would be no grounds for moving to suppress the items found in the car. There would be no arguable merit to this claim.

Second, Salim contends that his trial lawyer should have moved to dismiss the burglary charge because he cannot be charged with burglary for entering his own living quarters. Salim is wrong on the facts. He was no longer living with L.S. when he burglarized her home. To the contrary, he had been expressly ordered by the circuit court to stay away from L.S., to stay away from her residence and to stay away from her place of employment. Moreover, his defense to the charge was that he did not go to L.S.'s house on the day of the burglary. Because the argument he currently raises was meritless and contradicted his defense, his trial lawyer was not ineffective for failing to raise it. *See State v. Harvey*, 139 Wis. 2d 353, 380, 407 N.W.2d 235 (1987). There would be no arguable merit to this claim.

Third, Salim contends that his lawyer should have hired an investigator to get statements from L.S.'s neighbors and to take pictures of the house to refute her claims that she saw him driving from her home because there are thick trees blocking the view from the house. Assuming for the sake of argument that pictures of the home would have shown that it was surrounded by trees, the pictures would have made no difference in light of the testimony from L.S. and M.B. that they had seen Salim driving by the home. There would be no arguable merit to this claim.

Fourth, Salim contends his lawyer should have obtained audiotapes L.S. made of conversations they had to show that her intent was "to get him locked up from the get go." L.S.'s intent was not an issue in this trial. The issue in this trial was whether Salim committed various crimes. Salim's lawyer did not perform deficiently in failing to introduce the audiotaped

conversations at trial for the purported purpose of showing L.S.'s intent to harm Salim. There would be no arguable merit to this claim.

Fifth, Salim contends that his lawyer should have introduced into evidence the photos he took of blank prescription forms that Salim contends L.S. took from her work place to fill out for her and her friends. He contends that the pictures would have shown that because he knew about her abuse of prescription drugs from her place of employment, she started making up stories and called the police to lodge charges against him to retaliate against him.

In the context of his job as head of security at St. Luke's Hospital, Dobrzynski testified that he met with Salim to discuss Salim's allegations that L.S. was improperly obtaining drugs from the hospital and using or selling them. Dobrzynski testified that Salim gave him a copy of a photo of a blank prescription form in an attempt to substantiate his claim that L.S. was stealing narcotics and dealing drugs. Dobrzynski also testified that Salim admitted making over fifty anonymous calls to the hospital claiming that L.S. was stealing drugs and selling them. Dobrzynski testified that he investigated the anonymous calls according to hospital policy and found the allegations to be completely baseless. In addition to Dobrzynski's testimony, Salim testified about the blank prescription forms at trial. He testified that he met with the security chief to advise him about the situation and ask for some help for his wife's purported addiction. Salim's lawyer did not perform deficiently by failing to introduce pictures of the blank prescription forms because the pictures would have been cumulative to other testimony introduced at trial. There would be no arguable merit to this claim.

Sixth, Salim contends his lawyer should have questioned L.S. more during trial. Salim does not specify what questions he believes that his lawyer should have asked. During our no-

merit review, we act as an advocate, searching for any arguably meritorious issues for appeal. We have not found any instances during trial when Salim's lawyer performed in a deficient manner by failing to ask appropriate questions. There would be no arguable merit to this claim.

Salim next argues in his response that the circuit court improperly denied his request for an interpreter because Arabic is his first language. As support for his claim that he should have been provided with an interpreter, he points to the fact that he had to ask for clarification when the prosecutor asked him: "Are vulgarities appropriate for children in letters; yes or no?" because he did not understand the meaning of the word "vulgarities."

When a court determines that a person "has limited English proficiency and that an interpreter is necessary, the court shall advise the person that he or she has the right to a qualified interpreter at the public's expense if the person is ... [a] party in interest." WIS. STAT. § 885.38(3)(a)1. When Salim's lawyer raised Salim's request for an interpreter with the circuit court, the lawyer stated that although English was not Salim's first language, he spoke it very well. The circuit court noted that it had no problems communicating in English with Salim and its communication with him had been very fluid. The circuit court reviewed § 885.38(3)(a) and denied Salim's request, concluding that there was no need for an interpreter because Salim did not have limited English proficiency. The circuit court reasoned that Salim's lawyer had not had any difficulty communicating with him and said that it had not had any difficulty communicating with him either, noting that Salim had "been very articulate with me" and knew "how to communicate his mind." The circuit court stated that the matter could be revisited if any issues subsequently arose. The circuit court's conclusion that Salim did not need an interpreter was not clearly erroneous. See *State v. Yang*, 201 Wis. 2d 725, 729, 549 N.W.2d 769 (Ct. App. 1996). There would be no arguable merit to this claim.



Salim next argues in his response that he was a victim of vindictive prosecution because the prosecutor charged him with more crimes when he refused to accept a plea agreement. Prosecutors routinely amend charges as cases proceed either to plea hearings or trials, especially where, as here, criminal investigation is ongoing in the case. Salim has provided no basis to support his allegation that the prosecutor was acting vindictively. There would be no arguable merit to this claim.

Our independent review of the record reveals no other potential issues for appellate review. Therefore, we conclude that further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Glen B. Kulkoski is relieved of any further representation of Salim in this matter. *See* WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*