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DISTRICT III

July 28, 2015

To:

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

2015AP733-CRNM State of Wisconsin v. Sean M. Sees (L.C. # 2013CF611)

Before Hoover, P.J., Stark and Hruz, JJ.

Counsel for Sean Sees has filed a no-merit report concluding there is no arguable basis for Sees to challenge his convictions and sentences for possession of THC, second or subsequent offense, possession of amphetamine, second or subsequent offense, and possession of drug paraphernalia, all as a party to a crime. Sees was advised of his right to respond to the report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

The record discloses no arguable basis for Sees to challenge the sufficiency of the evidence. Officer Steven Mahoney testified he made a traffic stop and arrested the driver. The passengers were removed from the vehicle while it was being searched. Mahoney located a glass pipe that had the odor of burnt marijuana and asked the occupants whose pipe it was. Sees said it was his. Mahoney also found a bag of marijuana with one pill later identified as amphetamine, and again asked who it belonged to. Sees again said it was his. Mahoney denied having told the occupants that if nobody accepted responsibility, everyone would get a ticket.

After being properly advised of his right to testify or not testify, Sees testified that the pipe, bag of marijuana and pill did not belong to him. He claimed that when he got in to the vehicle he did not know there were any controlled substances inside and did not know who the contraband belonged to. He testified he took responsibility because the officer said if nobody accepted responsibility, everyone would get a ticket.

It is the jury's function to weigh the evidence and resolve conflicts in the testimony. *State v. Poellinger*, 153 Wis. 2d 493, 506, 451 N.W.2d 752 (1990). As the arbiter of the witnesses' credibility, the jury could reasonably find that Mahoney did not tell the occupants they would all get a ticket if nobody accepted responsibility, and that Sees's testimony that he took responsibility for that reason was not credible.

The prosecutor did not misstate the law by arguing that, even if the jury believed Sees's testimony, he could be convicted as a party to the crimes based on his attempt to aid the alleged actual perpetrator evade responsibility.

The record also discloses no arguable basis for challenging the sentencing court's discretion. The court could have imposed consecutive sentences totaling three years and thirty

days' initial confinement and four years' extended supervision. The court imposed and stayed consecutive and concurrent jail terms totaling one year, and placed Sees on probation after properly considering the seriousness of the offenses, Sees's character and prior record, and the need to protect the public. *See State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). As a condition of probation, the court ordered confinement in jail for eighty days, with credit for sixty days jail time, resulting in no additional jail time after applying good time credit. The court denied Sees's request for expunction, concluding the trial testimony and background provided by the presentence investigation report did not support granting expunction. The court considered no improper factors and the sentences are not arguably so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our 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. (2013-14).

IT IS FURTHER ORDERED that attorney Angela Henderson is relieved of her obligation to further represent Sees in this matter. WIS. STAT. RULE 809.32(3). (2013-14).

Diane M. Fremgen
Clerk of Court of Appeals