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DISTRICT IV

February 22, 2018

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Amber L. Parsons
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You are hereby notified that the Court has entered the following opinion and order:

2017AP903-CRNM State of Wisconsin v. Amber L. Parsons (L.C. # 2014CM223)

Before Blanchard, J.¹

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).

Amber Parsons appeals a judgment that convicted her, following a jury trial, of negligent mistreatment of an animal and disorderly conduct. Attorney Matthew A. Lynch has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; *Anders v.*

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

California, 386 U.S. 738, 744 (1967); *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses whether the evidence was sufficient to support the verdicts; whether the amended complaint was jurisdictionally defective because it listed the wrong date for the offense; and whether the circuit court properly exercised its discretion at sentencing. Parsons was sent a copy of the report, but has not filed a response. Upon independently examining the entire record, as well as the no-merit report, I conclude that there are no arguably meritorious appellate issues.

First, I have reviewed the trial transcripts and am satisfied that the evidence was sufficient to prove all the elements of each charged offense. *See* WIS. STAT. §§ 951.02, 951.18(1) and WIS JI—CRIMINAL 1980 (setting forth elements of negligent mistreatment of an animal); WIS. STAT. § 947.01 and WIS JI—CRIMINAL 1900 (setting forth elements of disorderly conduct); *State v. Zimmerman*, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (discussing standard for sufficiency of the evidence). In particular, the jury was entitled to believe the account of the eyewitness and the veterinarian’s opinion of the degree of force necessary to inflict the injury rather than Parsons’ explanation of how her dog’s leg was broken.

I do note that the judgment of conviction lists Count 1 as “Intentionally Mistreat Animals” while the amended complaint charged the offense as negligent mistreatment of animals and the circuit court instructed the jury on negligent mistreatment of animals. I will therefore direct that the judgment be amended to correct this clerical error and conform to the record.

As to the wrong offense date in the complaint, I agree with counsel’s analysis on pages 9-10 of the no-merit report that the error was not jurisdictional and that the defense was not

prejudiced because Parsons was provided notice of the correct date by a police report attached to the original complaint.

Finally, a challenge to the defendant's sentences would also lack arguable merit. The court imposed and stayed a sentence of 180 days in jail on the animal mistreatment count, subject to a two-year period of probation conditioned on serving 28 days in jail and performing 200 hours of community service. On the disorderly conduct count, the court imposed and stayed a 90-day jail sentence, subject to a concurrent two-year period of probation.

The sentences imposed did not exceed the maximum available penalties. *See* WIS. STAT. §§ 951.02 and 951.18 (classifying negligent mistreatment of animals as a Class A misdemeanor); 947.01(1) (classifying disorderly conduct as a Class B misdemeanor); 939.51(3)(a) (providing maximum imprisonment of nine months for a Class A misdemeanor); 939.51(3)(b) (providing maximum imprisonment of ninety days for a Class B misdemeanor); 973.09(2)(a)1m. (setting term of probation for a Class A misdemeanor at not less than six months and not more than one year); 973.09(2)(a)1r. (setting term of probation for Class B, Class C or unclassified misdemeanors at not more than one year); 973.09(2)(a)2. (increasing maximum original term of probation by one year when probation convicted of two to four misdemeanors at same time); 973.09(4) (allowing up to one year of jail as a condition of probation). Additionally, the record shows that the court properly considered the standard sentencing factors and explained their application to this case, emphasizing in particular that the injury to the dog was significant and warranted some punishment, but that Parsons' rehabilitative needs could otherwise be met on supervision. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197.

Upon an independent review of the record, I have found no other arguable basis for reversing the judgment of conviction. I conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgment of conviction shall be amended to show that Count 1 was negligent, not intentional. As amended, the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Matthew A. Lynch is relieved of any further representation of defendant Amber Parsons in this matter pursuant to WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals