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April 14, 2020

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

2018AP1139-CRNM State of Wisconsin v. Roger Paul Barber (L. C. No. 2017CF66)

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

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).

Counsel for Roger Barber has filed a no-merit report concluding there is no basis to challenge Barber's conviction for burglary of a dwelling as a habitual offender. Barber filed a response, and counsel filed a supplemental no-merit report. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no merit

to any issue that could be raised on appeal, and we summarily affirm. WIS. STAT. RULE 809.21 (2017-18).¹

A criminal complaint alleged that a police officer in Greenfield observed a Chrysler PT Cruiser make an illegal turn at approximately 9:50 p.m. and then drive into a gas station parking lot. The officer activated his emergency lights in an attempt to conduct a traffic stop. The driver of the PT Cruiser, later identified as Barber, parked the vehicle and exited as if he did not notice the squad car. As Barber attempted to walk away from his vehicle, the officer repeatedly ordered Barber to return to his vehicle and sit in the driver's seat.

Upon returning to his driver's seat, however, Barber started and revved the engine, and drove off behind the gas station building. In his exuberance to elude police, Barber ran his vehicle up onto a curb, stranding the vehicle. Barber was then arrested. Upon a search of his person, police discovered various items of jewelry in his pants pockets. The PT Cruiser, which was registered to Barber, contained additional jewelry, a seventy-two-piece set of silver fine-dining flatware, and a metal bowl. All told, thirty-nine pieces of jewelry including necklaces, bracelets, and rings were recovered from Barber.

That same day, a sixty-nine-year-old woman had reported to police that she discovered that her locked residence was burglarized between 8:00 a.m. and 9:30 p.m. Police observed several attempted entry points to the residence, and it was determined that entry had been achieved by kicking in the service door to the attached garage. The door from the garage to the

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

residence was also forced open. The victim reported that numerous jewelry items and her silver flatware set were stolen.

While police were processing Barber's arrest, they were made aware of the reported burglary in the nearby suburb. Police then determined that the tread of the shoes worn by Barber matched a shoe print left on the outside of the garage service door that was kicked in.

Barber was charged with one count of burglary of a building or dwelling with a habitual criminality enhancer, and also with one count of obstructing an officer. The criminal complaint also alleged that Barber was released from prison just three days before he burglarized the victim's residence in the present case.

Barber pleaded guilty to the burglary charge, and the obstructing charge was dismissed and read in. The parties also agreed that the crime of fleeing would not be formally charged but would be read in for sentencing. The circuit court imposed a sentence consisting of six years' initial confinement and four years' extended supervision, consecutive to any other sentence Barber was serving.

The no-merit report addresses potential issues regarding whether Barber's plea was knowingly, intelligently, and voluntarily entered; and whether the circuit court properly exercised its sentencing discretion. Upon our independent review of the record, we agree with

counsel's description, analysis, and conclusion that any challenge to these issues would lack arguable merit, and we will not further address them.²

Barber's response to the no-merit report argues the State breached the plea agreement through conduct and remarks that "convey[ed] a message to the trial court that a defendant[']s actions warrant a more severe sentence than that recommended." Our independent review of the record reveals no arguable issue of merit in this regard. The State began its sentencing argument by correctly summarizing the plea agreement, including the State's agreement to recommend "substantial prison." During its sentencing argument, the State focused on Barber's abysmal criminal record as a career burglar, noting Barber's first adult conviction for burglary was in 1985 when he was only nineteen years old, as well as his persistent failures on supervision. The State reviewed Barber's entire criminal history, including a 1994 case involving Barber taking a gun from a police officer's residence. The State's comments were not improper, and, to a large extent, they reflected Barber's prior record that was discussed at length in the presentence investigation report.

At the sentencing hearing, defense counsel also objected to the State's sentencing memorandum, contending the defense was not "privy to the information that went into that with regard to all the read-ins and the numbers he arrives at." However, the sentencing memorandum also began by recommending that Barber be sentenced to "substantial prison." At the sentencing hearing, the State said "the basis for everything in my memo is the court file." The State further

² Although not addressed in the no-merit report, the circuit court properly advised Barber of the potential deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(2). Any challenge to the conviction based on that issue would therefore lack merit. We also note the presentence investigation report mentioned the COMPAS risk assessment, but the record shows it was not "determinative" of the sentence imposed. See *State v. Loomis*, 2016 WI 68, ¶¶98-99, 371 Wis. 2d 235, 881 N.W.2d 749.

indicated it had “ordered the court files from storage, that the court files are still in my office ... and I invited [defense counsel] to look at them if he wanted to.” At one point during the sentencing argument, defense counsel objected that he did not have a copy of a prior victim-impact statement, but the State offered to provide a copy.

The State also pointed out that Barber had never been assaultive in his prior crimes, that he did his best to avoid encountering people in their homes, and that he did not fight or use weapons during his burglaries. At the end of the sentencing argument, the State remarked, “Substantial prison is necessary. It’s deserved. He’s earned it in a way that few other people in Milwaukee County’s history have ever earned it, and the community deserves it to protect themselves from Mr. Barber.” The plea agreement was that the State would recommend “substantial prison,” and that is what the State recommended. Any contention that the State breached the plea agreement would lack arguable merit.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that attorney Angela Kachelski is relieved of further representing Roger Barber in this matter. *See* 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