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STATE OF WISCONSIN
COURT OF APPEALS

DISTRICT I

Case Nos. 2019AP000105-CR, 2019AP000106-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MARVIN FRANK ROBINSON,

Defendant-Appellant.

On Notice of Appeal from a Judgment of Conviction
and Order Denying Postconviction Relief Entered in
the Milwaukee County Circuit Court, the Honorable
Michael J. Hanrahan, Presiding

REPLY BRIEF OF DEFENDANT-APPELLANT

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ARGUMENT

I. The record was insufficient to establish a factual basis for either the imposition of the domestic abuse modifier under Wis. Stat. §968.075 or the domestic abuse surcharges under Wis. Stat. §973.055.

Here, defense counsel stipulated to and the court accepted the allegations in the criminal complaints as the factual basis for Mr. Robinson's guilty pleas. (44:5-6, 12).¹ The State argues that this stipulation established a factual basis for the imposition of both the domestic abuse modifier under Wis. Stat. §968.075 and the domestic abuse surcharges under Wis. Stat. §973.055 because: 1) the criminal complaints stated that J.R.D. identified Mr. Robinson as her "ex-boyfriend" and indicated that there had been a history of domestic violence, and 2) the criminal complaint in Case 17CM2528 had a copy of a temporary restraining order included with it that indicated that Mr. Robinson and J.R.D. had a "current or former live-in relationship." (State's Response at 7-10). Mr. Robinson disagrees.

For the court to impose either the domestic abuse modifier under Wis. Stat. §968.075 or the domestic abuse surcharges under Wis. Stat. §973.055,

¹ All citations to the record in these consolidated cases are to the record in Case No. 2019AP000105-CR, unless otherwise indicated.

Mr. Robinson and J.R.D. were required to have a qualifying relationship—either married or formerly married, resided together or had formerly resided together, or had a child in common. *See* Wis. Stat. §968.075(1)(a); Wis. Stat. §973.055(1)(a)2.

The criminal complaints did not establish a factual basis for the required qualifying relationship. J.R.D.’s reference to Mr. Robinson as her “ex-boyfriend” did not establish that they were married, had a child together, or ever lived together. (1:4; 20019AP000106-CR 1:3). Instead, that statement simply meant they had a former dating relationship. Similarly, J.R.D.’s statement that there had been a “history of domestic violence in the past” was not an acknowledgement on her part that she was married to Mr. Robinson, had a child with him, or ever lived with him. (1:5).

And, although the State included a copy of a temporary restraining order with the criminal complaint in Case 17CM2528 that said Mr. Robinson and J.R.D. had a “current or former live-in relationship,” there is no statement in that criminal complaint incorporating the restraining order into it. ((2019AP000106-CR 1:1-16). The complaint in Case 17CM2528 simply states that it is “further based on review” of the temporary restraining order, which is insufficient to incorporate the restraining order into the complaint. (2019AP000106-CR 1:4). *See State v. Smaxwell*, 2000 WI App 112, ¶¶5-7, 235 Wis. 2d 230, 612 N.W.2d 756 (to incorporate a document into a complaint, “some statement in the body of

the complaint must indicate that another document, outside the four corners of the complaint itself, is intended to be included in the complaint.”).

Therefore, the criminal complaints did not establish a factual basis for the imposition of the domestic abuse modifier or the domestic abuse surcharges. Additionally, none of the parties made any statements at the plea and sentencing hearing which established that Mr. Robinson had a qualifying relationship with J.R.D. Since there was no factual basis for application of the domestic abuse modifier under Wis. Stat. §968.075, the reference in the judgment of conviction to domestic abuse and to Wis. Stat. §968.075 in Count 1 of Case 17CM2528 should be stricken. In addition, the lack of a factual basis to establish that Mr. Robinson and J.R.D. had a qualifying relationship also requires this Court to vacate the domestic abuse surcharges in Count 1 of Case 17CM2528 and all counts in Case 17CF3763.²

² In Mr. Robinson’s brief-in-chief, counsel requested publication. Because this matter will be decided by one judge, the decision will not be eligible for publication. Wis. Stat. §809.23(1)(b)4.

CONCLUSION

For the reasons stated above and in Mr. Robinson's brief-in-chief, he requests entry of an order striking all references to the domestic abuse modifier under Wis. Stat. §968.075(1)(a) in the judgment of conviction on Count 1 in Case 17CM2528. Further, Mr. Robinson requests that the court order that the domestic abuse surcharges under Wis. Stat. §973.055 be vacated on Count 1 in Case 17CM2528 and all counts on Case 17CF3763.

Dated this 16th day of August, 2019.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 686 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 16th day of August, 2019.

Signed:

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