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110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
Facsimile (608) 267-0640  
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**DISTRICT I**

September 23, 2014

To:

Hon. Glenn H. Yamahiro  
Circuit Court Judge  
901 N. 9th St., Branch 34  
Milwaukee, WI 53233-1425

Karen A. Loebel  
Asst. District Attorney  
821 W. State St.  
Milwaukee, WI 53233

John Barrett  
Clerk of Circuit Court  
Room 114  
821 W. State Street  
Milwaukee, WI 53233

Gregory M. Weber  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Paul G. Bonneson  
Law Offices of Paul G. Bonneson  
631 N. Mayfair Rd.  
Wauwatosa, WI 53226

Lemmanual Andreall King, II 310659  
Redgranite Corr. Inst.  
P.O. Box 925  
Redgranite, WI 54970-0925

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

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2013AP2131-CRNM      State of Wisconsin v. Lemmanual Andreall King, II  
(L.C. #2010CF2036)

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

Lemmanual Andreall King, II, appeals a judgment convicting him of first-degree reckless injury and first-degree recklessly endangering safety, both with use of a dangerous weapon. Paul G. Bonneson, Esq., filed a no-merit report seeking to withdraw as appointed appellate counsel. *See* WIS. STAT. RULE 809.32, and *Anders v. California*, 386 U.S. 738, 744 (1967). After considering the no-merit report and conducting an independent review of the Record, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether there is sufficient evidence to support the convictions. 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, 1018, 669 N.W.2d 762, 769 (quotation marks and citation omitted). We will not overturn the verdict “[i]f any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt.” *Ibid.* “The jury is the ultimate arbiter of a witness’s credibility.” See *State v. Norman*, 2003 WI 72, ¶68, 262 Wis. 2d 506, 538, 664 N.W.2d 97, 112.

To convict King of first-degree reckless injury while using a dangerous weapon, the State was required to show: (1) that King caused great bodily harm to the victim, where “cause” means that King’s act was a substantial factor in producing great bodily harm and “great bodily harm” means substantial injury; (2) that King caused great bodily harm by “criminally reckless conduct”; and (3) the circumstances of King’s conduct showed utter disregard for human life. See WIS JI—CRIMINAL 1250. To convict King of recklessly endangering with use of a dangerous weapon, the State was required to prove: (1) that King endangered the safety of another person; (2) that King endangered the safety of another person by “criminally reckless conduct;” and (3) that the circumstances of King’s conduct showed utter disregard for human life. See WIS JI—CRIMINAL 1345. For both of these charges, “criminally reckless conduct” means conduct that creates a risk of death or great bodily harm to another person, the risk of death or great bodily harm is unreasonable and substantial, and the person is was aware that his or her conduct created the unreasonable and substantial risk of death or great bodily harm.

At trial, Pierre Page testified that he and his friend Robert Wilson were at the home of Liz, his girlfriend's mother. After an altercation broke out involving some people at the house, Page, Wilson and King walked out of the house onto the front porch. Page testified that King was upset, and that King shot his gun into the air. Page testified that he side-stepped past King to get to his car and got into the driver's seat. Wilson got into the passenger's seat. Page testified that King approached the car and, after a brief conversation, King pointed the loaded pistol at him and fired it, but a bullet did not discharge. Page testified that he thought that the weapon was fake because it did not fire. Page testified that King then pointed the gun at Wilson and fired, wounding him. King gave a statement to police admitting that he shot the gun into the air to get Page and Wilson to leave and admitting that he had fired at both Page and Wilson, explaining that he feared for his life because he knew the men carried weapons and he had seen them be physically violent with other people. Page's testimony and King's statement to the police supported the jury's conclusion that King recklessly endangered Page's safety through criminally reckless conduct and caused great bodily harm to Wilson through criminally reckless conduct. Therefore, there would be no arguable merit to a claim that there was insufficient evidence to support the verdict.

The no-merit report next addresses whether there would be arguable merit to a challenge to the circuit court's decision admitting some, but not all, of the evidence King sought to introduce about bad acts of the victims that occurred before the shooting in this case. In certain types of criminal cases, "evidence of the turbulent and dangerous character or reputation of the deceased or the victim of the assault is relevant in determining whether the victim or the accused was the aggressor, and as bearing on the reasonableness of the defendant's apprehension of danger at the time of the incident." *McMorris v. State*, 58 Wis. 2d 144, 149, 205 N.W.2d 559,

561–562 (1973). The defendant must show “prior specific instances of violence within his knowledge” when the crime occurred. *Id.*, 58 Wis. 2d at 152, 205 N.W.2d at 563. We will affirm the circuit court’s decision to admit or exclude evidence unless the circuit court erroneously exercises its discretion. *State v. James*, 2005 WI App, 188, ¶8, 285 Wis. 2d 783, 792, 703 N.W.2d 727, 732.

King testified at the hearing on his motion to admit prior bad acts evidence that he saw Page and Wilson at the same home arguing with someone several weeks before the incident for which he was charged. King testified that Page pulled a gun from his waistband and handed it to Wilson. Page then beat the man he was angry with, busting his nose and lip. King also testified that he saw both Page and Wilson with handguns multiple times at the home and testified that they always rode around with guns in their car. King testified that he was concerned for his safety, and for the safety of others in the house, because he believed that Page and Wilson could engage in violent conduct and knew that they had guns. The circuit court allowed testimony about the incident two weeks prior to the alleged offense, but did not allow the more general testimony about the prior weapon possession by Page and Wilson because King had not provided specific dates and scenarios for the other times he saw Page and Wilson armed. This was a proper exercise of discretion; the circuit court allowed testimony about the specific incident that occurred shortly before the shooting, but did not allow King to testify that the men usually carried guns because King had not provided specific details about those prior incidents. There would be no arguable merit to a challenge to the circuit court’s discretionary ruling admitting in part and denying in part evidence of the victim’s prior bad acts.

Finally, the no-merit report addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced King to a total term of eleven years

of imprisonment, with seven years of initial confinement and four years of extended supervision. In its sentencing remarks, the circuit court considered the seriousness of the crime, the need to protect the public and King's past conduct and character. The circuit court explained that it believed that King, who had been shot before and suffered from posttraumatic stress disorder, had concerns for his safety, but that he had shown poor judgment in responding with an inappropriately high level of force. The circuit court noted that King was a productive member of society, but said that he had to be punished for acting in such a reckless fashion. 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, 556–560, 678 N.W.2d 197, 207–208. There would be no arguable merit to a challenge to the sentence on appeal.

Our independent review of the Record reveals no other potential issues for appellate review. Therefore, we affirm the judgment of conviction. We also relieve Paul G. Bonneson, Esq., of further representation of King in this matter.

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

IT IS FURTHER ORDERED that Paul G. Bonneson, Esq., is relieved of any further representation of King in this matter. *See* WIS. STAT. RULE 809.32(3).

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