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DISTRICT I

November 14, 2023

To:

Hon. T. Christopher Dee
Circuit Court Judge
Electronic Notice

John T. Wasielewski
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Edgar A. Torales 514490
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

Winn S. Collins
Electronic Notice

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

2022AP112-CRNM State of Wisconsin v. Edgar A. Torales (L.C. # 2019CF3939)

Before White, C.J., Donald, P.J., and Dugan, J.

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).

Edgar A. Torales appeals a judgment, entered upon a jury's verdicts, convicting him of armed robbery and possession of a firearm by a felon. His appellate counsel, John T. Wasielewski, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),¹ and *Anders v. California*, 386 U.S. 738 (1967). Torales received a copy of the report, was advised

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

of his right to file a response,² and has elected not to do so. Upon consideration of the report and an independent review of the record as mandated by *Anders*, this court summarily affirms the judgment because there is no arguable merit to any issue that could be pursued on appeal. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, two men, one of whom was shirtless, approached L.M. while he was working at an auto repair shop. L.M. identified the shirtless man as Torales and said that he recognized Torales because L.M. had previously declined to work on a vehicle for him. L.M. told police that Torales removed a black revolver from his pocket and tried to take a gold chain that L.M. was wearing around his neck. When L.M. resisted, Torales told the other man who was present to shoot L.M. During the altercation, Torales hit L.M. on the head with the gun. Eventually L.M. gave up the chain, and Torales and the other man fled. According to L.M., the gold chain was worth approximately \$10,000.

A police officer subsequently recovered video surveillance evidence depicting the robbery. The complaint alleged that the video showed Torales brandishing and pointing a firearm at L.M. before robbing him of his chain. The officer additionally noted that Torales had a distinctive scorpion chest tattoo. Using this information, the officer located a booking photo of Torales that appeared to match the individual in the video. L.M. picked Torales out of a photo array and identified him as the robber. According to the complaint, Torales was previously convicted of a felony.

² This court granted Torales multiple extensions to file his response.

The case proceeded to trial and the jury found Torales guilty of armed robbery and possessing a firearm as a felon.³ The circuit court ordered Torales to serve sentences totaling nine years of initial confinement and six years of extended supervision.

The no-merit report addresses whether the evidence was sufficient to support the jury verdicts. A claim of insufficiency of the evidence requires a showing that “the evidence, viewed most favorably to the [S]tate and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). We agree with counsel’s assessment that there would be no arguable merit to an argument that that standard has been met here. The evidence at trial—including testimony by L.M. and investigating officers—was sufficient to support the verdicts.

The no-merit report also addresses the circuit court’s evidentiary rulings, including the introduction of a photograph of the scorpion tattoo on Torales’s chest. Torales argued, among other things, that the tattoo evidence was a “form of compelling him to testify or provide evidence against himself when he ha[d] a constitutional right not to[.]” Upon concluding that the evidence was admissible, the circuit court explained: “A tattoo is no more testimonial than hair style, hair color, eye color, skin color, height, weight, so I don’t see any 5th Amendment problem with that.” We agree with counsel’s assessment that there would be no arguable merit to pursuing the circuit court decision to admit the tattoo photograph on this or any other basis. *See State v. Gonzalez*, 2014 WI 124, ¶19, 359 Wis. 2d 1, 856 N.W.2d 580 (explaining that a

³ At the start of trial, Torales stipulated to his status as a felon on the date the robbery was alleged to have occurred. The jury was left to decide whether he possessed a firearm.

defendant's teeth were "not different from other non-testimonial physical evidence, such as tattoos, ... that courts have deemed physical evidence whose compelled display violates no constitutional right" (footnote omitted)).

Additionally, the no-merit report discusses Torales's waiver of his right to testify and the circuit court's exercise of its sentencing discretion. This court is satisfied that the no-merit report properly concludes the issues it raises are meritless. This court further concludes that no procedural errors occurred prior to trial.

A review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Torales further in this appeal.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney John T. Wasielewski is relieved of further representation of Edgar A. Torales in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals