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DISTRICT IV

December 7, 2023

To:

Hon. Joseph G. Sciascia
Circuit Court Judge
Electronic Notice

Kelly Enright
Clerk of Circuit Court
Dodge County Justice Facility
Electronic Notice

Kirk D. Henley
Electronic Notice

Jin Ho D. Pack
Electronic Notice

Anthony B. Ashford
3902 Milwaukee St.
P.O. Box 8312
Madison, WI 53708

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

2022AP2013-CRNM State of Wisconsin v. Anthony B. Ashford (L.C. # 2020CF26)

Before Graham, 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).

Attorney Kirk Henley, as appointed counsel for Anthony Ashford, filed a no-merit report pursuant WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Ashford with a copy of the report, and both counsel and this court advised him of his right to file a response. Ashford has not responded. I conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After an independent review

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

of the record, I conclude that there is no arguable merit to any issue that could be raised on appeal.

Ashford was convicted of one misdemeanor count of battery following a jury trial. The court imposed a sentence of 82 days in jail, which, with sentence credit, was time already served.

The no-merit report addresses whether the evidence was sufficient. An appellate court will affirm the verdict unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Credibility of witnesses is for the trier of fact. *Id.* at 504.

Without attempting to recite the evidence in detail here, I conclude that the testimony of the victim, together with photographs, was sufficient. This evidence was not inherently incredible and, if believed by the jury, was sufficient to satisfy the elements of battery. There is no arguable merit to this issue.

The no-merit report also addresses whether the battery count was multiplicitous with a separate charge of suffocation or strangulation on which Ashford was acquitted. The report concludes that the counts were not multiplicitous. I agree with the analysis in the report. Furthermore, because Ashford was convicted of just one of the two counts, it is not apparent what relief would be available now, even if I were to conclude that the counts were multiplicitous when charged.

The no-merit report addresses Ashford's sentence. Because it amounted to time served and no consecutive sentence appears to have been imposed, this issue may be moot. However,

even if not moot, there would be no arguable merit to this issue. The sentence was within the legal maximum. As to discretionary issues, the standards for the circuit court and this court are well-established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Henley is relieved of further representation of Ashford 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