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DISTRICT I

April 9, 2024

To:

Hon. David A. Feiss
Reserve Judge

Michael J. Herbert
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
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Jacorey Deshawn Chapman 628311
Racine Youthful Offender Corr. Facility
P.O. Box 2500
Racine, WI 53404-2500

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

2023AP948-CRNM State of Wisconsin v. Jacorey Deshawn Chapman
(L.C. # 2021CF3032)

Before Donald, P.J., Geenen and Colón, 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).

Jacorey D. Chapman appeals a judgment convicting him of possession of a firearm by an adjudicated delinquent and second-degree recklessly endangering safety, as a party to the crime. Appellate counsel, Michael J. Herbert, 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). Chapman received a copy of the report, was advised of his right to file a response, and has not responded. We have independently reviewed the record and the no-merit report as mandated by ***Anders***, and we

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

conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm. *See* WIS. STAT. RULE 809.21.

The State charged Chapman with armed robbery, as a party to the crime, and possession of a firearm by an adjudicated delinquent. An amended complaint added a charge of second-degree recklessly endangering safety. The charges stemmed from an incident in which Chapman and his brother entered an apartment complex in Glendale with firearms. The complaint alleges that the brothers ascended a staircase and, after a few minutes, ran down the stairs while being chased by S.T., who emerged from an apartment and fired shots at Chapman's brother as he drove away. The complaint further states that police found a bullet casing, a bullet fragment, and a bullet strike in the drywall of the apartment from which S.T. emerged.

The matter proceeded to trial where multiple witnesses, including law enforcement and S.T., testified. S.T. testified that the brothers came to the apartment, knocked on the door, engaged in a "tussle" with him, stole his gun, fired a shot, and then fled. The jury also saw surveillance video of the brothers entering and fleeing the apartment complex with firearms. The jury acquitted Chapman of the robbery charge, but found him guilty of the remaining charges. The trial court sentenced Chapman to three years of initial confinement and three years of extended supervision on each charge to run consecutively. This no-merit report follows.

Appellate counsel's no-merit report addresses three issues: (1) whether the trial court erroneously exercised its discretion when it admitted two out-of-court statements from S.T. as prior consistent statements; (2) whether the evidence presented at trial was sufficient to support the convictions; and (3) whether the trial court erroneously exercised its sentencing discretion.

As to the first issue, we will uphold a trial court's evidentiary ruling if the court "examined the relevant facts, applied a proper standard of law, used a demonstrated rational process, and reached a conclusion that a reasonable judge could reach." ***State v. Hunt***, 2003 WI 81, ¶34, 263 Wis. 2d 1, 666 N.W.2d 771. We have independently reviewed the record and agree with appellate counsel's description of the facts and legal analysis as to this issue. Because the trial court properly exercised its discretion in admitting S.T.'s out-of-court statements, there would be no arguable merit to challenging the trial court's decision.

Appellate counsel's no-merit report next addresses whether the evidence presented at trial was sufficient to support the convictions. When this court considers the sufficiency of evidence presented at trial, we apply a highly deferential standard. ***State v. Kimbrough***, 2001 WI App 138, ¶12, 246 Wis. 2d 648, 630 N.W.2d 752. We "may not reverse a conviction unless the evidence, viewed most favorably to the [S]tate and the conviction, is so insufficient in probative value and force 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). The finder of fact, not this court, considers the weight of the evidence and the credibility of the witnesses and resolves any conflicts in the testimony. ***Id.*** at 503-04.

Here, the jury heard testimony from multiple witnesses and saw surveillance video showing Chapman enter and flee the Glendale apartment complex with a firearm. S.T. testified that he and Chapman engaged in a "tussle" and that a gun was fired in the apartment. Law enforcement testified that it found evidence of a shot being fired. The jury concluded from the evidence that Chapman was guilty of possession of a firearm by an adjudicated delinquent and second-degree recklessly endangering safety. This evidence is sufficient to sustain the

convictions. We agree with appellate counsel's determination that there is no arguable merit to challenging the sufficiency of the evidence supporting the verdicts.

Appellate counsel also addresses whether the trial court erroneously exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197; ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Our review of the record confirms that the trial court thoroughly considered the relevant sentencing objectives and factors. The trial court specifically focused on Chapman's character and the danger caused by Chapman's conduct. The sentence the trial court imposed is within the range authorized by law, *see* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public's sentiment, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There would be no arguable merit to a challenge to the trial court's sentencing discretion.

In addition to the issues discussed above, we have independently reviewed the record.[2] Our independent review of the record did not disclose any arguably meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgment of conviction, and relieve Attorney Herbert of further representation of Chapman in this appeal.

Upon the foregoing, therefore,

[2] We note that appellate counsel's no-merit report does not address whether any arguably meritorious issues arose as to *voir dire*, other evidentiary rulings, opening statements, closing arguments, Chapman's decision not to testify, or the defense's motion for a directed verdict. Our independent review of the record reveals no issues of arguable merit as to these stages in the proceedings.

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

IT IS FURTHER ORDERED that Attorney Michael J. Herbert is relieved of further representation of Jacorey D. Chapman 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