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**DISTRICT I/III**

July 15, 2014

To:

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

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2014AP251-CRNM	State of Wisconsin v. Wasim Khalid, Jr. (L. C. ##2012CF3818,
2014AP252-CRNM	2012CF5132)

Before Hoover, P.J., Mangerson and Stark, JJ.

Counsel for Wasim Khalid, Jr., has filed a no-merit report concluding there is no arguable basis for Khalid to challenge his convictions and sentences on two counts of robbery with use of force. Khalid was advised of his right to respond to the report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable basis for appeal.

The two robberies occurred one week apart in the same neighborhood. In the first robbery, as the victim walked through an alley, a man grabbed him and went through his pants

pockets, eventually stealing his wallet. When police checked the route the victim indicated the assailant took, they recovered the wallet in another alley. Khalid's fingerprints were found on a Safeway card belonging to the victim. Police also reviewed various video surveillance cameras in the neighborhood and identified Khalid as the perpetrator.

The second robbery occurred as the victim was walking home from a Brewers game. Two black males beat and robbed him of his wallet, credit cards, money, an iPhone and a Brewers ticket receipt. Police officers in the vicinity observed two black males running from the scene before the crime was reported. After the victim reported the crime, the officers drove around the area looking for the assailants. They found Khalid sweating profusely and breathing heavily. They observed blood stains on his clothing, and found the victim's iPhone, a Brewers ticket receipt and money on Khalid's person. The victim's wallet, credit card and a gift card were found within fifteen feet. A subsequent DNA test confirmed it was the victim's blood on Khalid's clothing.

The no-merit report addresses whether there is any arguable basis for challenging: (1) joinder of the two cases; (2) admissibility of the fingerprint analysis; (3) the identification evidence; (4) the admissibility of Khalid's statement; (5) the effectiveness of Khalid's trial counsel; and (6) the sentences. We agree with counsel's conclusion that there is no arguable merit to any of these issues.

Khalid insisted on joinder of the two cases over his counsel's objections. In addition, under WIS. STAT. § 971.12(1) (2011-12),<sup>1</sup> the closeness in time and place and similarities in the attacks allowed joinder of the two crimes as part of a common plan or scheme.

The trial court conducted a *Daubert*<sup>2</sup> hearing under WIS. STAT. § 907.02(1) regarding the admissibility of the fingerprint analysis. The fingerprint analyst testified regarding his experience and training and the validity of fingerprint analysis. Fingerprint analysis has been used for over 100 years. The trial court found the witness has performed fingerprint analyses between 3500 and 3700 times and had four years on-the-job training. His results were reviewed by other technicians who found no errors. He was certified by an international association. Therefore, there is no arguable basis for challenging the scientific validity of the fingerprint analysis.

The issue regarding the identification evidence centered on the videotape of the assault in the first robbery. The parties reviewed the tape and agreed, "It is what it is." The jury was free to view the tape itself and determine whether Khalid was the perpetrator.

In his statements to police, Khalid admitted an altercation with the victim in the second robbery, but attempted to describe the altercation as a fight rather than a robbery. The statement was video recorded and showed that Khalid had been warned of his constitutional rights, showed no sign of any impairment or disability, and voluntarily made the statements. The record shows no basis for suppressing his statements.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

<sup>2</sup> *Daubert v. Merrell Dow Pharm. Inc.*, 509 U.S. 579 (1993).

The record discloses no basis for challenging the effective assistance of Khalid's trial counsel. In light of the overwhelming evidence of Khalid's guilt, counsel had little choice but to attempt to challenge the evidence where possible. Counsel elected not to request a *Daubert* hearing on the DNA evidence. Nothing in the record suggests a basis for excluding that evidence.

Finally, the record discloses no arguable basis for challenging the sentences. The court imposed consecutive sentences totaling seven years' initial confinement and five years' extended supervision. The court could have sentenced Khalid to thirty years' imprisonment and fines totaling \$100,000. The court appropriately considered the seriousness of the offenses, Khalid's lack of remorse, his extensive prior record including revocation from supervision, and the danger he posed to the public. The court considered no improper factors, and the sentences are not arguably so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issue for review.

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

IT IS FURTHER ORDERED that attorney Michael Backes is relieved of his obligation to further represent Khalid in these matters. *See* WIS. STAT. RULE 809.32(3).

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