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**DISTRICT I**

December 12, 2014

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

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2014AP998-CRNM      State of Wisconsin v. Tyrone A. Carr (L.C. #2012CF5426)

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

Tyrone A. Carr appeals a judgment convicting him of armed robbery, as a party to a crime, fleeing an officer, and carrying a concealed weapon. Jeffrey W. Jensen, 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). Carr filed a response. After considering the no-merit report and the response, 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 conviction. 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 Carr of armed robbery, party to a crime, the State was required to prove beyond a reasonable doubt: (1) that Jufari Muhammad, the victim, was the owner of property; (2) that Carr or another person took and carried away Muhammad’s property; (3) that Carr or another person acted with intent to steal; (4) that Carr acted forcibly in taking Muhammad’s property; and (5) that Carr or another person used or threatened to use a dangerous weapon. *See* WIS JI—CRIMINAL 1480. To convict Carr as a party to a crime, the State was required to prove beyond a reasonable doubt that Carr was concerned in the commission of the crime of armed robbery by either directly admitting it or by intentionally aiding and abetting the person who directly committed it. *See* WIS JI—CRIMINAL 400. A person intentionally aids and abets the commission of a crime when they are acting with knowledge or belief that another person is committing or intends to commit a crime and knowingly either: (1) assists the person who commits the crime; or (2) is ready and willing to assist the person who commits the crime and the person who commits the crime knows of the willingness to assist. To convict Carr of fleeing an officer, the State was required to prove beyond a reasonable doubt that: (1) Carr operated a

vehicle on a highway after receiving a visual or audible signal from a marked police car; and (2) Carr knowingly fled a traffic officer by increasing the speed of the vehicle to flee. WIS JI—CRIMINAL 2630. To convict Carr of carrying a concealed weapon, the State was required to prove beyond a reasonable doubt that: (1) Carr carried a dangerous weapon; (2) Carr was aware of the presence of the weapon; and (3) the weapon was concealed. WIS JI—CRIMINAL 1335.

At trial, Muhammad testified that he was walking home at about 1:00 a.m. when he noticed a white van parked by the side of the road. As he approached, a man came out of the bushes near the van and demanded money, holding his hand in his sweatshirt pocket like he was holding a gun, although Muhammad did not see the gun. Fearing for his safety, Muhammad gave the man a \$50 dollar bill and two \$10 dollar bills. The robber then jumped in the van and drove away. The white van had a blue stripe and was missing a right front hubcap. Muhammad ran to a nearby store and called the police, who arrived several minutes later.

Police Officer Chad Boyack testified that he and his partner, Officer Nathan Fager, were on patrol when they were told to look for a white van with a blue stripe in connection with an armed robbery. A few minutes later, they noticed a white van with a blue stripe and a missing hubcap. They activated their lights and siren to pull it over. Officer Boyack testified that the van refused to pull over, so they followed it for over three miles, keeping their lights and siren activated. The van varied its speed, exceeding the speed limit at times and failing to stop for red lights and stop signs during the chase. Boyack used his radio to track the license plate number of the van to a residential address as they continued to follow it. When they neared that address, the van stopped in the street and a man jumped out and attempted to flee on foot. Boyack testified that he saw the man drop a pistol as he left the van. Boyack caught the man, who was later identified as Carr, just a short distance from the car. In Carr's pockets, the police found a \$50

dollar bill, a \$10 dollar bill, a \$5 dollar bill, four \$1 dollar bills and a black hat with eye holes cut in it which would have allowed it to be pulled down to conceal the wearer's identity.

The testimony of Muhammad and Officer Boyack, coupled with the physical evidence the police recovered, was sufficient to support the jury's verdict on all of the charges. From Muhammad's testimony that the robber acted as if he had a gun in his pocket and the officer's testimony that Carr dropped a gun as he fled, the jury could reasonably infer that Carr was carrying a concealed weapon when he robbed Muhammad. There would be no arguable merit to a claim that there is insufficient evidence to support the verdict.

The no-merit report also addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced Carr to an aggregate term of ten years of imprisonment, with five years of initial confinement and five years of extended supervision. The circuit court also made Carr eligible for boot camp after four years. Although the sentencing court's comments were very brief, the circuit court considered the seriousness of the offense and Carr's criminal history, placing emphasis on the fact that Carr had been on probation in Indiana when this offense occurred and had four recent offenses in Indiana. The circuit court considered Carr's positive character traits, but concluded that imposing a shorter sentence would depreciate the seriousness of the crime. The circuit court explained its sentence, albeit briefly, within 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.

In his response, Carr asks for a retrial and argues that his sentence was imposed in violation of the U.S. Constitution and state law. We have carefully conducted an independent

review of the Record, but we have found no constitutional or state law violations that entitle Carr to retrial. His sentence was imposed in accord with the laws of our state and is well below the maximum sentence that could have been imposed on him. Carr contends that he should not have been convicted because the evidence against him is circumstantial. The State may prove a criminal charge using only circumstantial evidence. *See State v. Poellinger*, 153 Wis. 2d 493, 507–508, 451 N.W.2d 752, 758 (1990). Carr also contends that a lawyer was not appointed to represent him on appeal. That assertion is not accurate. Jeffrey Jensen, Esq., was appointed to represent Carr, but Jensen has asked for permission to withdraw because he has found no arguably meritorious issues. We relieve Jensen of further representation of Carr because our independent review of the Record corroborates Jensen’s conclusion that there are no arguably meritorious issues for appeal.

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

IT IS FURTHER ORDERED that Jeffrey W. Jensen, Esq., is relieved of any further representation of Carr in this matter. *See* WIS. STAT. RULE 809.32(3).

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