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November 23, 2016

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

2016AP863-CRNM State of Wisconsin v. Timothy D. Williams (L.C. #2014CF136)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Timothy D. Williams appeals from a judgment of conviction of felony bail jumping and misdemeanor retail theft. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14),¹ and *Anders v. California*, 386 U.S. 738 (1967). Williams received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. Rule 809.21.

Williams was stopped by Saukville Walmart security personnel because it appeared he had switched UPC pricing information on two items he scanned at the self-checkout stand. A ten piece Calphalon cookware set scanned by Williams during checkout rang up at \$19.88 when its actual cost was \$199. An eighteen piece Calphalon knife set scanned by Williams during checkout rang up at \$11 when its actual cost was \$149.98. When Williams was asked to step into the security office to verify the accuracy of his purchase, he left the merchandise at the store, went out to his car, and drove away. Police stopped Williams' car not far from the Walmart store. After Williams and his girlfriend were arrested,² his car was searched and similar merchandise purchased from a Sheboygan Walmart store for less than actual retail price was recovered. At the time of the crime, Williams was on release on bail in a felony case in Milwaukee County that included a condition that he commit no new crimes.

A pretrial motion to suppress statements made by Williams before his arrest and evidence found in the car was filed and denied. The prosecution's motion to admit evidence of the Sheboygan Walmart transactions was granted without objection. Williams and his girlfriend were tried together in a two-day jury trial. Two Saukville Walmart employees and the three investigating officers testified. The store's security videos of Williams' self-checkout transactions at both Walmart stores were played for the jury. A stipulation was read to the jury

² Williams' girlfriend was at the Saukville Walmart store with him and placed the items in her shopping cart and accompanied Williams to the self-checkout stand. She was charged as a party to the crime of retail theft on the theory that she aided Williams in switching the UPC codes either before reaching the self-checkout stand or by attempting to distract the clerk monitoring the self-checkout stand.

that at the time of the Walmart incident, Williams had been charged with a felony offense in Milwaukee County, he was released on bail, and he knew that one of the conditions of bail was that he commit no new crimes.

The jury found both Williams and his girlfriend guilty of the charges. On Williams' convictions, sentence was withheld and consecutive probation terms imposed—one year for the retail theft, with six month condition jail time, and three years' for the felony bail jumping with twelve months condition jail time.

The no-merit report addresses whether the circuit court erred in denying the pretrial suppression motion, whether the jury was properly selected and instructed, whether there was sufficient credible evidence to support the jury's verdict, and whether the sentence was a proper exercise of discretion or was harsh and excessive. The report sets forth the applicable standard of review for each issue and discusses the evidence, findings, and law demonstrating that the potential issues lack merit. This court is satisfied that the no-merit report properly analyzes the issues it raises as being without merit and we will not discuss any of those potential issues further.

This court has also considered whether there is arguable merit to a claim that Williams' trial counsel was ineffective for not objecting to the motion to admit evidence of the Sheboygan Walmart transactions. We conclude there was no viable objection to make to the motion and therefore no merit to such a claim. In our review of the jury trial, we have considered whether the evidentiary rulings are subject to challenge and conclude they are not. Further, the trial court properly handled one officer's disclosure that she recognized one juror from her child's daycare. The court conducted an adequate colloquy with Williams on his waiver of the right to testify.

There were no objectionable statements in the opening and closing arguments. Thus, our review of the record discloses no other potential issues for appeal.

Accordingly, this court accepts the no-merit report, affirms the conviction and discharges appellate counsel of the obligation to represent Williams further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney John R. Breffeilh is relieved from further representing Timothy D. Williams in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals