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November 29, 2017

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

2016AP1201-CRNM State of Wisconsin v. Johnell Sartin (L.C. # 2014CF2791)

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

Johnell Sartin appeals a judgment of conviction entered after a jury found him guilty of acting as a party to the crime of armed robbery, contrary to WIS. STAT. § 943.32(1)(b) and (2) (2015-16)[1] and WIS. STAT. § 939.05. Sartin's appellate counsel filed a no-merit report pursuant

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Sartin received a copy of the report and has not filed a response. Upon consideration of the report and an independent review of the record, we conclude that 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.

Sartin went to trial on three counts of armed robbery by threat of force while using a dangerous weapon, as a party to the crime. The evidence showed that on a single night, three men were separately robbed by Sartin's cousin, Devan Black, while Sartin was present. Black threatened each victim with what turned out to be a Glock replica air pistol. By all accounts, Black wielded the gun and demanded money from the victims. Sartin admitted that he was present during the robberies and held onto the stolen property while he and Black rode around on bicycles. Sartin and Black were arrested and charged as codefendants. The State's theory was that Sartin aided and abetted the crimes by, at the very least, acting as a lookout. Sartin testified that he was surprised by and did nothing to assist Black's actions. The jury acquitted Sartin of the two earlier robberies, but found him guilty of count two, which was chronologically the third offense. The circuit court imposed a six-year bifurcated sentence, with three years of initial confinement followed by three years of extended supervision.

The no-merit report first discusses whether there exists an arguably meritorious challenge to Sartin's conviction based on the sufficiency of the evidence supporting the guilty verdict on count two. We must affirm the verdict unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that as a matter of law 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). The credibility of the witnesses and the weight

of the evidence is for the jury. ***Id.*** at 504. Here, the evidence at trial on count two, including the testimony of the victim, E.P., and a citizen witness, B.O., was sufficient to establish all the offense elements. The testimony was that Sartin and Black were riding their bikes together before the robbery and that they met up afterward, looked at the proceeds, and rode off together. During the robbery, Sartin was looking around and told Black to "hurry up, get the money." Though Sartin testified that he was trying to dissuade Black's actions, he admitted referring to Black by a fake name, and the proceeds were found on Sartin's person. As for Sartin's testimony that he did not know Black had a gun or planned to commit the robberies, this defense grows weaker with regard to each subsequent robbery, and was weakest as to the chronologically last incident, the count on which he was convicted. In light of our standard of review, a reasonable juror could have found beyond a reasonable doubt that Sartin intentionally aided and abetted the armed robbery of E.P.

The no-merit report also discusses the sentence imposed. We agree that any challenge to the circuit court's exercise of its sentencing discretion would be without arguable merit. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197 (it is well-settled that sentencing is committed to the circuit court's discretion and our review is limited to determining whether the court erroneously exercised that discretion). The court considered the nature of the offense, Sartin's character, and the need to protect the public. *See* ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Emphasizing that it was not punishing Sartin for exercising his right to a jury trial, the circuit court stated that its sentence was appropriate based on "consideration of those factors concerning your character and the need to protect society as well as the appropriate punishment that should be given to deter you and others as well as your rehabilitative needs." These are proper sentencing objectives. Further, we cannot conclude that

the six-year sentence when measured against the possible maximum sentence of forty years is so excessive or unusual as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

While we approve appellate counsel's analysis of the issues addressed, we consider the no-merit report incomplete. A jury trial has many components which must be examined for the existence of potential appellate issues, e.g., pretrial rulings, jury selection, evidentiary objections during trial, confirmation that the defendant's election to testify is knowingly made or waiver of the right to testify is valid, use of proper jury instructions, and propriety of opening statements and closing arguments. The no-merit report fails to give any indication that appointed counsel considered whether these parts of the process give rise to potential appellate issues.[2] Nevertheless, as part of our independent review, we have specifically considered each of these areas and determine that none gives rise to an arguably meritorious challenge. *See* ***State v. Allen***, 2010 WI 89, ¶82, 328 Wis. 2d 1, 786 N.W.2d 124 (difficult to know the nature and extent of the court of appeals' examination of the record when the court does not enumerate possible issues that it reviewed and rejected in its no-merit opinion).

Jury selection was completed without any objection from either party with regard to jurors excused for cause. Following a colloquy, Sartin waived his right to a ***Miranda-Goodchild***

[2] Counsel has a duty to review the entire record for potential appellate issues. A no-merit report serves to demonstrate to the court that counsel has discharged his or her duty of representation competently and professionally and that the indigent defendant is receiving the same type and level of assistance as would a paying client under similar circumstances. *See* ***McCoy v. Court of Appeals of Wis.***, 486 U.S. 429, 438 (1988). Appointed counsel is reminded that a no-merit report must satisfy the discussion rule which requires a statement of reasons why the appeal lacks merit by a brief summary of any case or statutory authority which appears to support the attorney's conclusions, or a synopsis of those facts in the record which might compel that same result. ***Id.*** at 440.

hearing[3] concerning the admissibility of his statements to law enforcement. The circuit court properly exercised its discretion in ruling on evidentiary objections made during trial, and conducted a proper colloquy with Sartin about his decision to testify. The record reveals no impropriety in the parties' opening statements or closing arguments. Sartin did not object to the proposed jury instructions or to the circuit court's answers to the jury's questions during deliberations, and we see no arguably meritorious challenge grounded in these processes. Following the guilty verdict, the jurors were individually polled and the circuit court properly denied Sartin's motion for judgment notwithstanding the verdict. In sum, having reviewed the record, we see no arguably meritorious challenge to Sartin's conviction or his sentence. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to further represent Sartin 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 T. Wasielewski is relieved from further representing Johnell Sartin in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals

[3] At a ***Miranda-Goodchild*** hearing the issues to be decided are "the voluntariness of the statements, the proper giving of the ***Miranda*** warnings and the intelligent waiver of the ***Miranda*** rights." ***Norwood v. State***, 74 Wis. 2d 343, 362, 246 N.W.2d 801 (1976).