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**DISTRICT III**

March 6, 2018

To:

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Circuit Court Judge  
Brown County Courthouse  
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John VanderLeest  
Clerk of Circuit Court  
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P.O. Box 19033  
Green Bay, WI 54307-9033

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

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2017AP713-CRNM      State of Wisconsin v. Archie Lee Dudley (L. C. No. 2015CF692)

Before Stark, P.J., Hruz and Seidl, 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).**

Counsel for Archie Lee Dudley filed a no-merit report concluding there is no arguable basis for Dudley to challenge his convictions and sentences for second-degree sexual assault—use of force, false imprisonment and battery, all as a repeater. Dudley filed a response challenging the victim’s credibility, claiming his conviction resulted from a lack of African-Americans on the jury, and alleging ineffective assistance of his trial and postconviction counsel based on their

failure to investigate whether there was systematic exclusion of African-Americans from the jury venire. 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 State's case was based on the victim's testimony, DNA evidence, Dudley's initial denial that he had intercourse with the victim and his subsequent claim of consensual intercourse after he was informed of the DNA evidence, medical reports regarding the victim's injuries, and Dudley's request to his girlfriend's son to search for and remove a condom from the location where the assault occurred. The jury found Dudley guilty of the three crimes alleged in the complaint, and the court imposed consecutive sentences totaling twenty-one years' initial confinement and ten years' extended supervision.

The no-merit report addresses the jury selection process, whether Dudley received a fair trial, the sufficiency of the evidence, and whether the circuit court properly exercised its sentencing discretion. We agree with counsel's conclusion that there is no arguable basis for appeal on those issues.

Dudley's argument regarding the victim's credibility fails because the jury, not this court, decides the credibility of witnesses. *State v. Kienitz*, 227 Wis. 2d 423, 440, 597 N.W.2d 712 (1999). This court can overturn a jury's credibility determination only if its finding is contrary to the laws of nature or conceded facts which did not occur here. *Chapman v. State*, 69 Wis. 2d 581, 583, 230 N.W.2d 824 (1975).

Dudley's challenge to the racial makeup of the jury fails because the record contains no evidence of systematic exclusion of African-Americans from the jury venire. *See Duren v. Missouri*, 439 U.S. 357, 359 (1979). Dudley's argument that his attorneys were ineffective for

failing to establish systematic exclusion fails because counsel is only required to undertake reasonable investigation of the issue. *See Strickland v. Washington*, 466 U.S. 668, 695 (1984). According to the United States Census Bureau, African-Americans make up only 2.3 percent of Brown County's population. Statistically, the absence of African-Americans in the venire for Dudley's case was sufficiently likely without systematic exclusion to make further investigation an unreasonable exercise.

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

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21 (2015-16).

IT IS FURTHER ORDERED that attorney Frederick Bechtold is relieved of his obligation to further represent Dudley in this matter. WIS. STAT. RULE 809.32(3) (2015-16).

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*