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March 27, 2018

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

2017AP192-CRNM State of Wisconsin v. Darnell M. Brown (L. C. No. 2015CF1417)

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).

Attorneys for Darnell Brown have filed a no-merit report concluding no grounds exist to challenge Brown's conviction for throwing or discharging bodily fluid at a safety worker,

contrary to WIS. STAT. § 941.375(2) (2015-16).¹ Brown was informed of his right to file a response to the no-merit 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 merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The State charged Brown with throwing or discharging bodily fluid at a safety worker and with disorderly conduct, both counts as repeaters. At the outset of the criminal proceedings, the circuit court granted defense counsel's request for a competency examination. An initial examiner's report was inconclusive, but it recommended an inpatient evaluation where "a more intensive level of observation and assessment" would be available. Following an inpatient evaluation, the examiner's report opined that Brown was competent to proceed. At a hearing, the parties and the circuit court agreed Brown was competent to proceed.

This and three other cases were resolved under a global plea agreement. Relevant to this case, Brown pleaded guilty to throwing or discharging bodily fluid at a safety worker, without the repeater enhancement. In exchange, the State agreed to dismiss and read in the remaining count in this case and to cap its sentence recommendation at eighteen months of initial confinement and eighteen months of extended supervision, consecutive to Brown's sentence in other cases. Out of a maximum possible three and one-half year sentence, the circuit court initially imposed sixteen months' initial confinement followed by three years' extended

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

supervision. The court later reduced Brown's extended supervision to two years in order to comport with the statutory maximum period of extended supervision.

Although the no-merit report does not specifically address it, we conclude there is no arguable merit to challenge the circuit court's competency determination. "No person who lacks substantial mental capacity to understand the proceedings or assist in his or her defense may be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures." *State v. Byrge*, 2000 WI 101, ¶28, 237 Wis. 2d 197, 614 N.W.2d 477. To determine legal competency, the circuit court considers a defendant's present mental capacity to understand and assist at the time of the proceedings. *Id.*, ¶¶30-31. A circuit court's competency determination should be reversed only when clearly erroneous. *Id.*, ¶46.

After his inpatient evaluation, an examining psychologist submitted a report opining to a reasonable degree of professional certainty that Brown did not lack the "substantial mental capacity to understand the proceedings and assist in his own defense," outlining her clinical findings and the reasoning behind her opinion. At the competency hearing, Brown insisted he was competent to proceed and defense counsel noted his agreement that Brown had been "restored to competency." Based on the psychologist's report, the circuit court found Brown competent to proceed. The record supports the court's determination.

The no-merit report addresses whether Brown knowingly, intelligently and voluntarily entered a guilty plea and whether the circuit court properly exercised its sentencing discretion. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that any challenge to Brown's plea or sentence would lack arguable merit. 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.

IT IS FURTHER ORDERED that attorneys Alisha McKay and Andrew R. Hinkel are relieved of their obligation to further represent Brown in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals