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**DISTRICT I**

May 23, 2018

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

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2017AP306-CRNM      State of Wisconsin v. Jeffrey Kevin Scott (L.C. # 2013CF5500)

Before Brennan, P.J., Kessler and Dugan, 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).**

Jeffrey Kevin Scott appeals a judgment convicting him after a jury trial of robbery of a financial institution, the Landmark Credit Union in Milwaukee. Attorney Patrick Flanagan, who was appointed to represent Scott, filed a no-merit report seeking to withdraw as appellate

counsel. See WIS. STAT. RULE 809.32 (2015-16),<sup>1</sup> and *Anders v. California*, 386 U.S. 738, 744 (1967). Scott responded to the no-merit report. After considering the no-merit report and the response, and after conducting an independent review of the record, we conclude that there are no issues of arguable merit that Scott could raise on appeal.

The no-merit report addresses whether there would be arguable merit to a claim that the evidence was insufficient to support the verdict. 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, 669 N.W.2d 762 (citation omitted). “If 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, an appellate court may not overturn a verdict.” *Id.* (citation omitted).

The testimony and other evidence adduced at trial are accurately summarized in the no-merit report. Based on our review of the trial transcripts in the record and as summarized in the report, and viewing the evidence in the light most favorable to the jury’s verdict, we conclude that there was sufficient evidence to convict Scott.

The no-merit report addresses whether there would be arguable merit to a claim that the circuit court erred in granting in part and denying in part Scott’s pretrial motion to suppress bank records and video surveillance recordings from the Veterans Administration Credit Union. Detective Shaundra Randolph interviewed Scott regarding his whereabouts when the Landmark

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

Credit Union was robbed. Scott initially told Randolph that on the day of the robbery he was at *his* bank, the Veterans Administration Credit Union, where he had withdrawn \$500. Then, later, he said that he made the withdrawal the day *before* the robbery. To verify Scott's story, the police obtained Scott's bank records and video surveillance recordings from the Veterans Administration Credit Union but did not first secure a search warrant. Because the police did not use the proper process for obtaining the bank records, the circuit court suppressed them.

As for the video surveillance recordings, the circuit court explained in its detailed oral decision that the police procurement of the video surveillance recordings did not violate Scott's rights under the Fourth Amendment. The Veterans Administration Credit Union video surveillance records were the key suppression issue because they showed Scott dressed in the same outfit worn by the Landmark Credit Union robber—brown pants and a lime green polo shirt with a white stripe across the center. Scott had no privacy interest in the recordings made of the Veterans Administration Credit Union's public business area. The circuit court agreed that if Randolph had not had access to Scott's bank records, which pinpointed the time he was at the bank, it would have made it more difficult to find him in the video footage, but concluded that Randolph would have reviewed the footage looking for him because she was very thorough in her investigation. We conclude that there would be no arguable merit to a challenge to the portion of the circuit court's order denying Scott's suppression motion.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion by imposing an unduly harsh sentence. The circuit court sentenced Scott to fourteen years' of initial confinement and five years' of extended supervision. In its detailed sentencing remarks, the circuit court placed emphasis on the aggravated nature of the crime, which made the bank teller fear for her life and caused an

evacuation of the bank because Scott left a device that looked like a bomb. The circuit court noted Scott's extensive record of criminal offenses spanning over twenty-five years and said that Scott showed no remorse. Even so, the court concluded that the State's recommendation of twenty years of initial incarceration was too harsh because Scott would be in his eighties before he would be released. The court considered appropriate factors in deciding what length of sentence to impose and explained its application of the various sentencing guidelines in accordance with the framework set forth in *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, there would be no arguable merit to an appellate challenge to the sentence on the ground that it was unduly harsh.

The no-merit report and Scott's response address whether there would be arguable merit to a claim that Scott received ineffective assistance from his trial counsel. A defendant claiming ineffective assistance of trial counsel must show both that his counsel performed deficiently and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We agree with the no-merit report's analysis and its conclusion that there is nothing in the record to indicate that Scott's trial counsel ineffectively represented him. There would be no arguable merit to this claim.

The no-merit report and Scott's response also address whether the circuit court erred by denying the defense's motion for mistrial and, later, for a new trial on the ground that the State failed to disclose to the defense that one of the police officers involved in investigating this case, Richard Martinez, had been placed on a "bad cop" list within the District Attorney's office. The State did not call Martinez as a witness and informed the court that it did not alert the defense about Martinez's status before trial—though the prosecutor was forthcoming about the issue when it arose during trial—because it never intended to use any information from Martinez at

trial. Instead, the State called Police Officer Michael Anderson, Martinez's partner, to testify at trial. The circuit court properly ruled that the prosecutor was under no obligation to disclose the information about Martinez given the circumstances. Scott's argument in his response that Anderson's testimony needed to be corroborated by another police officer has no legal basis. There would be no arguable merit to this claim.

In his response, Scott argues that the prosecution did not establish that it was Scott in the video surveillance footage from the Veterans Administration Credit Union. The State showed the recording to the jury. The recording speaks for itself. As for Scott's contention that his name was improperly cropped into the video from the Veterans Administration Credit Union after the fact, this oversight was remedied as soon as Scott pointed it out, and was not relied on in any way by the State. Moreover, given the other evidence against Scott, the result of the trial would not have been different if the video recording had been excluded. There would be no arguable merit to this claim.

In his response, Scott also argues that the police violated his medical privacy rights by contacting the Jesse Brown Veterans Administration Hospital in Illinois to attempt to verify Scott's inaccurate statement to the police that he had been in the hospital when the robbery occurred. During the pretrial conference on October 23, 2014, Scott's counsel argued that the hospital violated federal privacy law by giving the officers information about Scott's whereabouts without his informed consent. The prosecutor said that she did not intend to use the information at trial and, in fact, she did not use it. Moreover, Scott's counsel immediately objected when a witness testified about Scott being "at a facility in another state," and no evidence came in about the hospital. Therefore, there would be no arguable merit to this claim.

Scott next argues in his response that the jury should not have been shown a booking photograph from which the bank teller identified him, because it suggested to the jury that he had previously been involved in criminal misconduct. The photograph was not identified as a booking photograph to the jury. When the jury asked to see various exhibits, including photographs, the parties agreed to redact identifying information. There would be no arguable merit to this claim.

Our independent review of the record also reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Patrick Flanagan from further representation of Scott.

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

IT IS FURTHER ORDERED that Attorney Patrick Flanagan is relieved of any further representation of Scott in this matter. *See* WIS. STAT. RULE 809.32(3).

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*