



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

June 7, 2018

To:

Hon. William S. Pocan
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St., Room 401
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Basil M. Loeb
Schmidlkofer, Toth, Loeb & Drosen, LLC
949 Glenview Avenue
Wauwatosa, WI 53213

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Clarence A. Saffold 543727
Stanley Corr. Inst.
100 Corrections Drive
Stanley, WI 54768

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

2017AP1083-CRNM State of Wisconsin v. Clarence A. Saffold (L.C. # 2014CF4714)

Before Kessler, P.J., Brennan and Brash, 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).

Clarence A. Saffold appeals a judgment convicting him after a jury trial of felon in possession of a firearm and obstructing an officer. Attorney Basil M. Loeb, who was appointed to represent Saffold, filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS.

STAT. RULE 809.32 (2015-16),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Saffold was advised of his right to respond, but he did not do so. After considering the no-merit report and conducting an independent review of the record, we conclude that there are no issues of arguable merit that Saffold could raise on appeal.

The no-merit report first addresses whether there would be arguable merit to a challenge to the circuit court's decision denying Saffold's suppression motion. Saffold argued that the police did not have a reasonable suspicion to stop him. See *Terry v. Ohio*, 392 U.S. 1 (1968). Noting that evasive behavior is a factor in determining whether there is a reasonable suspicion that criminal activity is afoot, see *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000), the circuit court concluded in a detailed oral decision that the police had a reasonable suspicion to approach Saffold because: (1) the incident occurred in a high crime area at 11:45 p.m.; (2) Saffold looked over his shoulder and noticed the police in their marked police car; (3) Saffold grasped a bulge in his waistband; and (4) Saffold immediately took off running from the police. Because the circuit court properly concluded that the police had reasonable suspicion to stop Saffold, there would be no arguable merit to a claim that the police violated Saffold's rights under the Fourth Amendment.

The no-merit report next 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,

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

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). The verdict will be overturned only if no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt, viewing the evidence most favorably to the conviction. *See State v. Alles*, 106 Wis. 2d 368, 376-77, 316 N.W.2d 378 (1982).

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

The no-merit report further addresses whether there would be arguable merit to an appellate challenge to the sentence. The circuit court sentenced Saffold to five years of imprisonment for possession of a firearm, consisting of three years of initial confinement and two years of extended supervision. The circuit court imposed a concurrent term of nine months in jail for obstructing an officer. The court considered appropriate factors in deciding the length of sentence to impose and explained how the sentence served the circuit court’s sentencing objectives. The circuit court’s decision was 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.

Finally, the no-merit report addresses whether a claim that Saffold received constitutionally ineffective assistance from his trial counsel would have arguable merit. We agree with the report’s analysis that both of his attorneys rendered effective assistance.

Therefore, we conclude that there would be no arguable merit to a claim that Saffold received ineffective assistance of trial counsel.

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 Basil M. Loeb from further representation of Saffold.

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 Basil M. Loeb is relieved of any further representation of Clarence A. Saffold 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