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

2017AP602-CRNM State of Wisconsin v. Anthony L. Dotson, Jr. (L.C. # 2016CF1514)

Before Kessler, P.J., Brash 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).

Anthony L. Dotson, Jr., appeals from convictions for one count of robbery with use of force, as a party to a crime; one count of taking and driving a vehicle without consent, as a party to a crime; and one count of battery. *See* WIS. STAT. §§ 943.32(1)(a), 939.05, 943.23(2), and

940.19(1) (2015-16).[1] Appellate counsel, Jorge R. Fragoso, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32, to which Dotson has responded. In response, Fragoso filed a supplemental no-merit report. We have independently reviewed the record, the no-merit report, Dotson's response, and the supplemental no-merit report as mandated by ***Anders***. We conclude that there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm.

The criminal complaint alleged that Dotson and two other men drove to the workplace of Dotson's father, A.D. As A.D. was arriving to begin an evening shift at 10:00 p.m., one man approached A.D. and threw him to the ground. The second man took A.D.'s keys, credit cards, and cash. Next, the third man—who A.D. later identified as Dotson—kicked and punched A.D. and then drove off in A.D.'s car. The complaint noted that the assault was captured on video from two different cameras outside A.D.'s workplace and that the recordings showed an assault "consistent with what [A.D.] described." Dotson was charged with the aforementioned crimes in connection with the incidents at A.D.'s workplace.

The complaint also alleged that later that night, A.D.'s niece saw Dotson drive away in another vehicle belonging to A.D. that was parked outside her house.[2] Dotson was charged with another count of taking and driving a vehicle without the owner's consent, as a party to a crime, for taking that vehicle.

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

[2] Whether A.D. owned that vehicle was a debated fact at trial.

The case proceeded to trial. Dotson's defense was that he was not one of the men who attacked A.D. and took his cars. Both the State and the defense elicited testimony from numerous family members about "bad blood" between Dotson and his father, which the State said was a motive for the crimes and the defense claimed was a motive for A.D. to falsely accuse his son of being involved. A.D. testified that his son was one of his attackers, while Dotson testified that he was not involved in any of the crimes.

The jury found Dotson guilty of the three crimes that occurred at A.D.'s workplace, but it acquitted him of the second vehicle theft. The trial court sentenced Dotson to three concurrent sentences that will require Dotson to serve a total of thirty months of initial confinement and sixty months of extended supervision. The trial court also ordered Dotson, a first-time felon, to provide a DNA sample and pay three mandatory DNA surcharges.

The no-merit report provides a lengthy summary of the jury selection process, the testimony of each witness, and the trial court's key rulings. The no-merit report addresses five main issues, including: (1) whether the jury was "properly selected and instructed"; (2) whether there were any evidentiary errors that justify a new trial; (3) whether there were any procedural errors that justify a new trial; (4) whether there was sufficient evidence to support the verdicts; and (5) whether the trial court properly exercised its sentencing discretion. We have reviewed the entire record, including the surveillance videotapes and photographs that were admitted as evidence at trial. This court is satisfied that the no-merit report properly analyzes the issues it raises, and we will not discuss all of them. However, we will briefly comment on two issues and we will also address the concerns that Dotson raised in his response to the no-merit report, one of which is addressed in the supplemental no-merit report.

First, we agree with appellate counsel that there would be no arguable merit to challenging the sufficiency of the evidence.[3] Dotson's convictions for the three crimes that occurred at A.D.'s workplace depended greatly on the jury's assessment of the credibility of Dotson and A.D., as the videotapes did not definitively show the identity of the attackers. The jurors were given reasons to disbelieve A.D.—such as the fact that he may not have told the first responding officer that his own son was one of the attackers—but the jury chose to accept A.D.'s testimony and found Dotson guilty. There would be no arguable merit to assert that the evidence, viewed most favorably to the State and the convictions, was "so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *See* ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990).

Second, the no-merit report addresses the sentences imposed, providing citations to the sentencing transcript and analyzing the trial court's compliance with ***State v. Gallion***, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. This court is satisfied that the no-merit report properly analyzes the sentencing hearing. We also agree there would be no arguable merit to asserting that the sentences were unduly harsh or excessive. Dotson was facing over twenty-one years of confinement. His three concurrent sentences totaling thirty months of initial confinement and sixty months of extended supervision do not shock the conscience. *See* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449 ("A sentence well within the limits of the maximum sentence is unlikely to be unduly harsh or unconscionable.").

[3] We do not attempt to summarize all of the evidence presented at trial. As noted, the no-merit report provides a thorough discussion of the evidence that is consistent with our review of the record.

Finally, we turn to Dotson's response to the no-merit report. The response is an eight-page handwritten document that contains single-sentence assertions and summaries of testimony. It appears to raise a number of issues, which we will address in turn.

Dotson summarizes much of his father's testimony and explains how trial counsel tried to impeach A.D.[4] Dotson alleges that his father and other family members lied about what they saw the night the crimes were committed. To the extent Dotson is suggesting there would be merit to challenging the jury's credibility determinations, we are not persuaded. *See* ***State v. Norman***, 2003 WI 72, ¶68, 262 Wis. 2d 506, 664 N.W.2d 97 ("The jury is the ultimate arbiter of a witness's credibility."). As noted above, the jury could have chosen to acquit Dotson, but it instead chose to accept the testimony offered by A.D. and other witnesses.

Dotson complains that his trial counsel did not believe he was innocent and asserts he did not know he could seek other counsel. We are not convinced Dotson has identified an issue of arguable merit, and our review of the record does not identify any specific deficiencies in trial counsel's performance that would warrant a motion alleging ineffective assistance of counsel.

Next, the response expresses concern that the jurors may have seen Dotson's jail bracelet and concluded he was in custody. This was an issue Dotson personally raised with the trial court before deciding whether to testify. The no-merit report addresses this issue at length. We agree with counsel's analysis and conclusion that there is no issue of arguable merit to pursue with respect to Dotson's bracelet.

When Dotson discussed with the trial court whether the jurors were aware he was in custody, he also told the trial court that his "waiver popped up." In his response to the no-merit report, Dotson states in a single sentence: "My waiver popped up on the T.V. My ***Miranda*** waiver."[5] (Bolding and italics added.) Dotson offers no additional elaboration. However, having reviewed the trial exhibits and the record, we infer that while the jury was being shown a series of photographs and documents that were stored on a compact disk, the first document—a ***Miranda*** waiver form that Dotson signed—was displayed on the screen and could be seen by the jury. Nothing was noted on the record at the time it occurred, but Dotson mentioned this briefly when he addressed the trial court before testifying, in the context of discussing whether his jail bracelet and the ***Miranda*** waiver form implied that he was in custody. Again, we agree with the no-merit report's analysis regarding Dotson's concerns about the jury's view of his custodial status; there would be no merit to challenge the trial court's handling of that issue. Further, we note that with respect to the ***Miranda*** waiver form, the State elicited testimony from a detective who took Dotson into custody. The detective testified that he "read [Dotson] his rights" and that Dotson answered the detective's questions for "[t]hirteen minutes and ten seconds." Given the detective's testimony that Dotson chose to give a statement after he was arrested and read his rights, it is not clear how Dotson could have been prejudiced by the projection of his ***Miranda*** waiver on the screen. We are not persuaded Dotson has identified an issue of arguable merit.

[4] The response also summarizes other things that happened at trial, such as one juror expressing concern about paying for transportation and trial counsel objecting to certain evidence. Dotson has not identified any specific concerns about those events and we do not discern any issues of arguable merit related to those events.

[5] *See* ***Miranda v. Arizona***, 384 U.S. 436, 477 (1966).

Dotson also complains about the fact that his trial counsel waived his appearance on the morning of trial when the parties and the trial court briefly discussed final trial arrangements during an on-the-record pretrial conference. At that brief appearance, the trial court explained that the case was "number one on the list" and would likely take place later that day. The trial court gave the parties copies of the preliminary jury instructions and indicated that it would have "a quick conference" about those instructions with the parties just before the instructions were read to the jury. The parties also addressed a topic raised by trial counsel: the number of A.D.'s prior convictions that should be mentioned at trial. Trial counsel argued that if asked about his prior convictions, A.D.'s answer should be either one or two. The trial court agreed with trial counsel's analysis of A.D.'s prior crimes and said that A.D. should be told to answer "two." We are not persuaded that Dotson has identified an issue of arguable merit. "Due process guarantees a defendant 'the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure.'" ***State v. Alexander***, 2013 WI 70, ¶20, 349 Wis. 2d 327, 833 N.W.2d 126 (citation omitted). It is not clear that Dotson's presence was critical to the brief pretrial conference, and Dotson's two-sentence statement in his response concerning this pretrial conference does not identify specific ways he believes his presence would have affected or contributed to the discussion of the number of A.D.'s prior convictions that should be mentioned at trial. We conclude there is no issue of arguable merit to pursue.

Finally, Dotson complains that his trial counsel did not contact a specific witness. Appellate counsel filed a five-page supplemental no-merit brief addressing this concern. Appellate counsel explains that the woman was listed on the defense's witness list and was referenced in trial counsel's opening statement. Appellate counsel also indicates that the reason

for trial counsel's decision not to call the woman in question as a witness is not in the record. However, appellate counsel explains, there would be no arguable merit to alleging that trial counsel provided ineffective assistance because the woman was not a key witness and, "[a]t most, her testimony would have corroborated Mr. Dotson's testimony that he slept in a car parked in back of [her] property during the days surrounding the assault." We agree with appellate counsel's analysis and his conclusion that there would be no arguable merit to bringing a motion alleging trial counsel ineffectiveness for not calling the woman as a witness.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Dotson further 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 Jorge R. Fragoso is relieved from further representing Anthony L. Dotson, Jr., in this appeal. *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