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DISTRICT I

June 26, 2018

To:

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

2017AP420-CRNM State of Wisconsin v. Nathan Binns (L.C. # 2015CF3438)

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).

Nathan Binns appeals from a judgment convicting him of first-degree reckless homicide as a party to a crime. *See* WIS. STAT. §§ 940.02(1), 939.05 (2015-16).¹ His appellate counsel, Hans P. Koesser, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v.*

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

California, 386 U.S. 738 (1967). Binns received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Binns was charged with first-degree reckless homicide by use of a dangerous weapon as a party to a crime and with attempted armed robbery with use of force as a party to a crime stemming from an incident that occurred in July 2015. The complaint, which served as the factual basis for Binns' subsequent guilty plea, relayed that on that date, police officers on bicycle patrol heard what sounded like a gunshot. As one of the officers looked in the direction of the sound, he saw two men running, one of whom appeared to be holding his waistband. When ordered to stop and get down on the ground, one of the men did so; however, the man holding his waistband kept running. That man was later identified as Binns. When an officer ordered Binns to drop his firearm, Binns did so but continued to run until he was apprehended by two officers. The revolver Binns dropped contained five unfired cartridges and one spent casing.

The victim, who suffered a single gunshot wound to the head and neck, was found at the crime scene. Binns was seventeen years old at the time. In a statement to police, Binns said that upon observing the victim "flashing money," he told the two people he was with that they should rob him. According to the complaint, when they approached the victim, he "got up like he was going to fight," which prompted Binns to pull his revolver from his waistband. Binns told police he shot through his sweatshirt.

Pursuant to plea negotiations, Binns pled guilty to first-degree reckless homicide as a party to a crime. In exchange, the State dismissed the while-armed enhancer on the reckless homicide charge and additionally moved to dismiss and read in the attempted armed robbery charge. The State additionally agreed to recommend that the circuit court sentence Binns to twenty-five years of initial confinement, but it would not make a specific recommendation as to extended supervision. The circuit court accepted Binns' plea and sentenced him to twenty-five years of initial confinement and fifteen years of extended supervision.

The detailed no-merit report addresses the potential issues of whether Binns' plea was freely, voluntarily, and knowingly entered, and whether the sentence was the result of an erroneous exercise of discretion.² This court is satisfied that the no-merit report properly analyzes the issues it raises as being without merit, and this court will not discuss them further.

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 Binns further in this appeal.

Upon the foregoing, therefore,

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

² We note in passing that Binns' trial counsel initially requested that the PSI not contain a sentencing recommendation. However, after the circuit court advised that it found such recommendations helpful, it appears that counsel did not pursue the issue further, and the PSI did contain a recommendation. There would be no arguable merit to appealing this issue. "The court has discretion to order a PSI and to determine the extent to which it will rely upon the information in the PSI." *See State v. Suchocki*, 208 Wis. 2d 509, 515, 561 N.W.2d 332 (Ct. App. 1997), *abrogated on other grounds by State v. Tiepelman*, 2006 WI 66, 291 Wis. 2d 179, 717 N.W.2d 1.

IT IS FURTHER ORDERED that Attorney Koesser is relieved of further representation of Nathan Binns 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