



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

October 8, 2018

To:

Hon. Timothy M. Witkowiak
Safety Building Courtroom, #113
821 W. State St.
Milwaukee, WI 53233-1427

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

Marcella De Peters
Law Office of Marcella De Peters
6650 W. State St. PMB #318
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

Brandon Deshawn Harris 543665
Stanley Correctional Inst.
100 Corrections Drive
Stanley, WI 54768

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

2017AP1873-CRNM State of Wisconsin v. Brandon Deshawn Harris
(L.C. # 2013CF5770)

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).

Brandon Deshawn Harris appeals from a judgment of conviction for one count of armed robbery as a party to a crime, contrary to WIS. STAT. §§ 943.32(2) and 939.05 (2013-14).¹ Harris's appellate counsel, Marcella De Peters, has filed a no-merit report pursuant to *Anders v.*

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

California, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32. Harris has not filed a response. We have independently reviewed the record and the no-merit report as mandated by *Anders*. We conclude there is no issue of arguable merit that could be pursued on appeal. Therefore, we summarily affirm.

The criminal complaint alleged that on December 23, 2013, Harris and another man entered a department store, approached the customer service counter, displayed “a large black semiautomatic handgun,” and ordered an employee to give them money from the cash register. Harris and the other man took over \$4000 in cash and fled the store. Harris was later apprehended and confessed his involvement in the crime, indicating that the gun used in the crime was actually a BB gun.

Harris was charged with one count of armed robbery as a party to a crime, for which the maximum sentence was twenty-five years of initial confinement and fifteen years of extended supervision. At the time he was charged, he was on probation for a prior felony and had two additional charges pending.²

Harris entered into a plea agreement with the State pursuant to which he agreed to plead guilty as charged. In exchange, the State agreed to dismiss and read in charges from Milwaukee County Circuit Court Case Nos. 2012CT1407 (alleging a violation of the duty to stop upon striking another vehicle) and 2012CM3769 (alleging theft by false representation). The State further agreed to recommend that Harris pay “full restitution for all victims” and serve thirteen

² Harris’s probation was subsequently revoked in Milwaukee County Circuit Court Case No. 2011CF1175, and he was sent to prison to serve the previously imposed sentence of two years of initial confinement.

years of initial confinement and five years of extended supervision. The defense was free to argue for a lesser sentence.

The trial court conducted a plea colloquy with Harris, accepted his guilty plea, and found him guilty. It also dismissed the other two pending cases and indicated they would be read in for sentencing purposes.

The trial court ordered a presentence investigation (PSI) report, and Harris obtained his own sentencing report. The PSI report recommended a sentence of eight to ten years of initial confinement and five to six years of extended supervision. Harris's report recommended a sentence of five years of initial confinement and eight years of extended supervision. Harris's report also recommended that Harris be made eligible for the Challenge Incarceration Program and the Wisconsin Substance Abuse Program, and that he be ordered to "[p]ay all restitution deemed necessary by the [c]ourt" as a condition of extended supervision. (Bolding omitted.)

At the sentencing hearing, the State indicated that it did not object to the defense recommendation that Harris be made eligible for the Challenge Incarceration Program and the Wisconsin Substance Abuse Program. The trial court sentenced Harris to nine years of initial confinement and five years of extended supervision, "consecutive to any other sentence," including the two-year revocation sentence Harris was serving for a prior felony. The trial court declared Harris eligible for the Challenge Incarceration Program and the Wisconsin Substance Abuse Program after he has served five years of initial confinement in this case.

The trial court ordered Harris to pay joint and several restitution of \$2071.94 for the armed robbery, plus \$2000 in restitution related to 2012CM3769, which was dismissed and read

in pursuant to the plea agreement.³ The trial court also ordered Harris to pay a \$250 DNA surcharge. After postconviction counsel was appointed, there was substantial postconviction litigation in this case concerning the \$250 DNA surcharge. Ultimately, Harris and the State stipulated to vacate the DNA surcharge. The trial court accepted the stipulation and vacated the DNA surcharge. This appeal follows.

The no-merit report thoroughly addresses two potential issues: (1) whether Harris's plea was intelligently, voluntarily, and knowingly entered; and (2) whether the trial court erroneously exercised its sentencing discretion. For example, with respect to Harris's plea, the no-merit report analyzes the trial court's compliance with WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986), discussing issues such as the trial court's explanation of the maximum penalties and the elements of the crime. The no-merit report also addresses the sentence 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 agrees with appellate counsel's description and analysis of the potential issues identified in the no-merit report, and we independently conclude that pursuing those issues would lack arguable merit. This court is satisfied that the no-merit report properly analyzes the issues it raises and will not discuss those issues further.

³ At sentencing, the State explained that the \$2071.94 restitution request represented the cash not recovered from the robbery and that the \$2000 restitution request represented the amount of a loan fraudulently obtained, which led to the criminal charge in 2012CM3769. Trial counsel did not contest either the amount of the restitution requests or Harris's ability to pay restitution. Moreover, the defense's written sentencing recommendation urged the trial court to order Harris to pay all necessary restitution. Under the circumstances, there would be no arguable merit to challenge the restitution order. See *State v. Szarkowitz*, 157 Wis. 2d 740, 749-50, 460 N.W.2d 819 (Ct. App. 1990) (allowing the trial court to proceed with a restitution order in the absence of an objection by the defendant to the amount of restitution requested or the defendant's assertion of an inability to pay).

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 Harris 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 Marcella De Peters is relieved from further representing Brandon Deshawn Harris 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