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**DISTRICT I**

July 30, 2019

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8885 S. 68th St.  
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You are hereby notified that the Court has entered the following order:

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2018AP2198-CRNM      State of Wisconsin v. Jaykim Lamar Wilder (L.C. # 2016CF5128)

Before Brash, P.J., Brennan 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).**

Jaykim Lamar Wilder appeals from a judgment of conviction for robbery by use of force. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18),<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Wilder received a copy of the report, was

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

advised of his right to file a response, and has elected not to do so.<sup>2</sup> Upon consideration of the report and an independent review of the record, we summarily affirm the judgment because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Wilder and two females entered a clothing store. The females handed baby clothing to Wilder and he attempted to exit the store without paying for the clothing. The store manager, K.T., tried to stop him by locking the front door. Several times, Wilder told K.T. to open the door and he elbowed her in the chest to push her away. K.T. unlocked the door and Wilder fled with about \$400 worth of clothing. K.T. identified Wilder from a photo array and he was arrested and charged with robbery by use of force. While released on bond for this crime, Wilder was arrested and charged with retail theft and bail jumping in a second case. The two cases were joined for trial over Wilder's objection.

Before trial, a competency evaluation was performed. Wilder was determined to be competent to stand trial and he did not object to that determination. Then an evaluation was completed to determine if a not guilty by reason of mental disease or defect (NGI) defense was viable. It was determined not to be a viable defense. Wilder did not object to that determination.

During jury voir dire, Wilder asked that two potential jurors be struck for cause. The request was granted as to one potential juror, a man who had once been an assistant district attorney and at the time of trial was serving as the chairman of the Wisconsin Parole

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<sup>2</sup> After the time for a response expired and the appeal was submitted to the court, it was held in abeyance pending a decision in *State v. Trammell*, 2019 WI 59, \_\_ Wis. 2d \_\_, 928 N.W.2d 564. The *Trammell* decision has no effect on this no-merit appeal. After the decision in *Trammell*, appellate counsel requested the stay be lifted and "the parties be provided time to file the appropriate Appellate Briefs." Because the no-merit report was filed and the time for a response allowed, there is no need to allow further briefing. Therefore, no action is taken on counsel's request.

Commission. Wilder's request was denied as to a second potential juror who had once been a city attorney and at the time of trial was serving as the executive director of the fire and police commission. The trial court also overruled Wilder's objection to the prosecution's request to strike a third potential juror who had a medical procedure scheduled for the potential third day of trial and permitted the strike.

In the middle of the morning of the second day of trial, Wilder's attorney again questioned Wilder's competency in light of the numerous notes Wilder was passing to counsel and references he continued to make about getting a better plea deal. The trial court denied a motion to have Wilder examined for competency. It found that Wilder was simply presenting himself as a difficult client who was pushing for a different plea offer.

At trial, the jury heard K.T.'s testimony and was shown the surveillance video which captured the robbery. At the close of the State's case, the trial court dismissed the retail theft and related bail jumping charges. The jury found Wilder guilty of robbery by use of force.

A five-year prison sentence was imposed and stayed in favor of two years of probation with one year of conditional time in the House of Correction. Wilder was also fined \$500 with the money being taken from posted bail. Before all the transcripts were prepared, Wilder moved for amendment or clarification of the judgment of conviction to allow him to serve his conditional time with release privileges for school, work, and childcare responsibilities. The trial court denied the motion, concluding that to allow Wilder to serve his condition time with release privileges would unduly depreciate the seriousness of the felony offense and frustrate the court's sentencing intent.

The no-merit report addresses the potential issues of whether the trial court erred in granting the prosecution’s motion for joinder of the two cases for trial, whether it erred in not striking the potential juror who was the executive director of the fire and police commission, whether there was sufficient evidence to support the guilty verdict, and whether the sentence was a proper exercise of discretion or unduly harsh. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit.

With respect to the sentence, we specifically consider whether Wilder was punished for his decision to go to trial. “A defendant cannot receive a harsher sentence solely because he has availed himself of the important constitutional right of trial by jury.” *Kubart v. State*, 70 Wis. 2d 94, 97, 233 N.W.2d 404 (1975). Twice during sentencing, the trial court stated that Wilder had failed to accept responsibility for his crime and stated: “I wish you would have taken responsibility before you took this thing to trial.” Viewing this comment in the context of what followed—the trial court’s observation that the store clerk was terrorized by reliving the experience in her trial testimony and that there was no need for her terror because Wilder could have obtained baby clothes for free from many community sources—there is no possibility that the sentence was imposed to penalize Wilder for exercising his constitutional right. The court looked to other appropriate factors. The sentence imposed was not to punish Wilder for going to trial, but to meet his rehabilitative needs and make an impression upon him that he needs to stop stealing.

We have also considered whether the trial court’s handling of the competency questions, the potential NGI defense, and the denial of the motion for release privileges present any issue of arguable merit. We conclude they do not. No other aspect of the trial presents an issue of arguable merit for appeal. The colloquy to establish that Wilder knowingly elected not to testify

was thorough, the jury instructions were proper, there was no impropriety in the opening and closing arguments, the jury's request during deliberation to view the surveillance video was properly handled, and the jury was polled when the verdict was delivered and confirmed that the verdict was unanimous. There being no arguably meritorious issues for appeal, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Wilder 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 Michael S. Holzman is relieved from further representing Jaykim Lamar Wilder in this appeal. *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*