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DISTRICT II

August 7, 2019

To:

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

2019AP6-CRNM

State of Wisconsin v. Larry Ellison, Jr. (L.C. #2017CF171)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

Larry Ellison, Jr., appeals from a judgment convicting him of first-degree recklessly endangering safety as a repeater and attempted first-degree intentional homicide as party to a crime (PTAC). Ellison's appointed appellate counsel has filed a no-merit report pursuant to

WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Ellison was advised of his right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE 809.32, 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.

Ellison and two others in the vehicle in which he was a passenger were involved in a high-speed shoot-out with the four occupants of a second vehicle. He was charged with four counts of attempted first-degree intentional homicide and six counts of first-degree recklessly endangering safety, all ten counts as PTAC. He also was charged with one count of possession of a firearm by a felon. All eleven counts carried a repeater penalty enhancer.

The State later filed a seven-count amended information. Ellison eventually entered guilty pleas to Count 3 (first-degree recklessly endangering safety as a repeater) and Count 4 (PTAC attempted first-degree intentional homicide). The remaining counts were dismissed and read in. The court imposed the following sentence: on Count 4, twenty years bifurcated as ten years' initial confinement and ten years' extended supervision, concurrent to the revocation he currently was serving, and on Count 3, fifteen years bifurcated as ten years' initial confinement and five years' extended supervision, consecutive to Count 4. This no-merit appeal followed.

The no-merit report examines whether (1) the trial court erroneously exercised its discretion in sentencing Ellison, (2) a manifest injustice requires that Ellison's guilty pleas be

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

withdrawn,² and (3) the court properly determined Ellison’s eligibility for the challenge incarceration and earned release programs. As our review of the record satisfies us that the no-merit report adequately analyzes these issues as without merit, we address them no further.

Our review of the record discloses no other potential issues for appeal. Ellison’s guilty pleas waived the right to raise nonjurisdictional defects and defenses arising from proceedings before entry of the pleas, including claimed violations of constitutional rights. *State v. Kraemer*, 156 Wis. 2d 761, 765, 457 N.W.2d 562 (Ct. App. 1990). Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Ellison further in this appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Bradley J. Lochowicz is relieved from further representing Ellison 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

² “A manifest injustice occurs when there has been ‘a serious flaw in the fundamental integrity of the plea.’” *State v. Cross*, 2010 WI 70, ¶42, 326 Wis. 2d 492, 786 N.W.2d 64 (citation omitted); *see also State v. Rock*, 92 Wis. 2d 554, 558-59, 285 N.W.2d 739 (1979) (citing examples of a manifest injustice).