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DISTRICT I

August 9, 2019

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

2018AP1632-CRNM State of Wisconsin v. David Earl Crawford
(L.C. # 2015CF2074)

Before Kessler, 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).

David Earl Crawford appeals from a judgment of conviction for first-degree reckless homicide and felon in possession of a firearm for which he was sentenced to a total of forty years' initial confinement and twelve years' extended supervision. His 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). Crawford 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, the judgment is summarily affirmed because we conclude that there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Crawford was found guilty at a jury trial. Shasmin Brown testified that she was fighting with Leon Kimbrough on a neighborhood corner near a convenience store. Several people were milling around while the fight was going on, and the people were trying to separate Brown and Kimbrough. Robert Echols, Brown's boyfriend at the time, came upon the fight and punched Kimbrough. As Echols and Kimbrough were fighting, a man not involved in the fight walked up and shot Echols. Echols started to run away and was shot three more times in the back. Echols died. Brown and a convenience store worker, who recorded the fight and shooting on his cell phone, identified Crawford as the man who shot Echols. Crawford stipulated that he had a prior felony conviction.

The no-merit report sets forth appellate counsel's review of the initial appearance, preliminary hearing, adjournments of the trial date, the withdrawal of the first appointed trial attorney, the proceedings to compel Kimbrough's attendance at the trial, the jury trial, and sentencing. With respect to the jury trial, the report demonstrates that appellate counsel reviewed the voir dire; the determination of prior convictions of witnesses, including Crawford;

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

the question of whether one juror and Crawford's wife knew each other; the denial of the defense motion for a directed verdict; the colloquy regarding Crawford's election to testify; the opening and closing arguments; jury instructions; and the polling of the jury. The report addresses whether any procedural errors occurred before or during the trial, whether there was sufficient credible evidence to support the guilty verdict, whether the sentence was the result of an erroneous exercise of discretion, and whether any grounds exist for sentence modification. This court is satisfied that the no-merit report properly analyzes the issues it raises as being without merit. We will not discuss any of those potential issues further. We also observe that the sentence is well within the maximum and cannot be considered excessive. *See State v. Daniels*, 117 Wis. 2d 9, 22, 343 N.W.2d 411 (Ct. App. 1983) ("A sentence well within the limits of the maximum sentence is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.").

The record includes two questions from the jury asking to see certain exhibits. It does not appear that the responses to those questions were handled on the record. However, no issue of arguable merit exists from the lack of a record on how the questions were handled. It is within the trial court's discretion to decide what exhibits will be sent to the jury. *State v. Larsen*, 165 Wis. 2d 316, 321-22, 477 N.W.2d 87 (Ct. App. 1991). The decision is guided by three considerations: (1) whether "the exhibit will aid the jury in proper consideration of the case"; (2) "whether a party will be unduly prejudiced by submission of the exhibit"; and (3) "whether the exhibit could be subjected to improper use by the jury." *State v. Jensen*, 147 Wis. 2d 240, 260, 432 N.W.2d 913 (1988). Here, the jury requested exhibits, which were photographs that had already been published to the jury. It cannot be questioned that those exhibits would aid the

jury's consideration, that Crawford was not unduly prejudiced by submitting the exhibits to the jury, and that the exhibits would not be subjected to improper use by the jury. If the exhibits were sent to jury, it was a proper exercise of discretion to do so.

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 Crawford 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 Angela Kachelski is relieved from further representing David Earl Crawford 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