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**DISTRICT II**

October 2, 2019

To:

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

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2018AP1510-CRNM      State of Wisconsin v. Keith J. Eggum (L.C. #2017CF767)

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).**

Keith J. Eggum appeals from a judgment convicting him of disorderly conduct, criminal damage to property, and six counts of felony bail jumping, all as a repeater. Eggum's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)<sup>1</sup> and *Anders v.*

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

*California*, 386 U.S. 738 (1967). Eggum filed a response. After reviewing the record, counsel's report, and Eggum's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Eggum was convicted following a jury trial of disorderly conduct, criminal damage to property, and six counts of felony bail jumping, all as a repeater. The charges stemmed from an incident in which Eggum threatened jail staff and started a small fire in his cell, damaging property and causing a disturbance. At the time, Eggum was out on bond in several felony cases, with the condition that he not commit any crime.<sup>2</sup> For his actions, the circuit court imposed an aggregate sentence of four years of initial confinement and four years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether the evidence at Eggum's jury trial was sufficient to support his convictions. When reviewing the sufficiency of the evidence, we may not substitute our judgment for that of the jury "unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Our review of the trial transcripts persuades us that the State produced ample evidence to convict Eggum of his crimes. That evidence included certified copies of Eggum's bonds and testimony from jail staff who witnessed the incident. We agree with counsel that a challenge to the sufficiency of the evidence would lack arguable merit.

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<sup>2</sup> Eggum was back in the jail on another matter.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the court’s sentencing decision had a “rational and explainable basis.” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In fashioning its sentence, the court considered the seriousness of the offenses, Eggum’s character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Eggum’s lengthy criminal record, the sentence imposed does not “shock public sentiment and violate the judgment of reasonable people concerning what is right and proper.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Eggum’s sentence would lack arguable merit.

Finally, the no-merit report addresses several other issues, including (1) whether the circuit court violated Eggum’s right to self-representation; (2) whether the court violated Eggum’s rights by ordering him restrained during trial; and (3) whether the court violated Eggum’s rights by removing him from the courtroom during trial. In every proceeding that he participated in, Eggum exhibited defiance to authority with outbursts, name-calling, obscenities, threats,<sup>3</sup> and refusing to cooperate in the most basic ways.<sup>4</sup> This resulted in the court being unable to conduct a colloquy with Eggum when he expressed interest in representing himself. It also led the court to ordering Eggum restrained<sup>5</sup> and removing him from the courtroom during

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<sup>3</sup> The original circuit court judge recused herself after Eggum threatened to put a bullet in her skull.

<sup>4</sup> At times, Eggum refused to participate by audio or video means despite being given the option to do so. He also refused to wear a shirt at one hearing and initially refused to wear street clothes at trial.

<sup>5</sup> The order to restrain Eggum came after he overturned a table and struggled with court officers.

trial.<sup>6</sup> We are satisfied that the report properly analyzes these issues as without merit, and we will not discuss them further.

In addition to the foregoing issues, we considered other potential issues that arise in cases tried to a jury, *e.g.*, jury selection, objections during trial, confirmation that the defendant's waiver of the right to testify is valid, use of proper jury instructions, and propriety of opening statements and closing arguments. Here, the jury was selected in a lawful manner. Objections during trial were properly ruled on. When Eggum elected not to testify, the circuit court conducted a proper colloquy to ensure that his waiver was valid. The jury instructions accurately conveyed the applicable law and burden of proof. No improper arguments were made to the jury during opening statements or closing arguments. Accordingly, we conclude that such issues would lack arguable merit.

As noted, Eggum filed a response to counsel's no-merit report. The response appears to question the sufficiency of the evidence, which we have already addressed. It also includes a cartoon, which has no relevance to the case. In any event, we are not persuaded that Eggum's response presents an issue of arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.<sup>7</sup> Because we conclude that there would be no arguable merit to any issue that could

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<sup>6</sup> Eggum was still able to participate at trial via audio and video means.

<sup>7</sup> The issue of competency was raised by defense counsel. The court-appointed psychologist opined that Eggum was competent to proceed. Neither the State nor defense contested that conclusion. As Eggum demonstrated an ability to comport himself at times, the circuit court believed that his disruptive behavior was intentional.

be raised on appeal, we accept the no-merit report and relieve Attorney Bradley J. Lochowicz of further representation in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Bradley J. Lochowicz is relieved of further representation of Keith J. Eggum 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*