

seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Clayton was sent a copy of the report and advised of his right to file a response. He has not filed a response. Based on our review of the no-merit report and our independent review of the record, we conclude that no issue of arguable merit could be raised on appeal and summarily affirm the judgment.

Clayton was charged with stalking as a domestic abuse repeater and a habitual criminal repeater, disorderly conduct as a domestic abuse repeater and a habitual criminal repeater, and fleeing or eluding an officer as a habitual criminal repeater. A jury found Clayton guilty on all three charges. The circuit court sentenced Clayton as follows: three years of initial confinement and two years of extended supervision on the stalking count; one year of initial confinement and one year of extended supervision on the disorderly conduct count, concurrent to the sentence for stalking; and three and one-half years of initial confinement and two years of extended supervision on the fleeing count, consecutive to any other sentence.

The no-merit report first addresses whether the evidence was sufficient to convict Clayton. Our standard of review for sufficiency of the evidence has been summarized as follows:

[A]n appellate court may not reverse a conviction unless the evidence, viewed most favorably to the [s]tate and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.

State v. Poellinger, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). “[W]hen faced with a record of historical facts which supports more than one inference, an appellate court must accept and

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

follow the inference drawn by the trier of fact unless the evidence on which that inference is based is incredible as a matter of law.” *Id.* at 506-07.

Based on these standards, we agree with appellate counsel that there is no arguable merit to challenging the sufficiency of the evidence. Without attempting to recite the trial evidence in detail here, we note that it included testimony from the victim, testimony from several police officers, and text messages sent to the victim. In short, there was evidence that Clayton repeatedly engaged in stalking conduct targeting the victim; that, on at least one occasion, Clayton’s conduct created a broader disturbance; and that, in one instance when the police responded to the scene, Clayton escaped after leading them on a high speed vehicle chase. Appellate counsel’s no-merit report adequately explains why potential challenges to the sufficiency of the evidence lack arguable merit.

Our review of the record discloses no other issues of arguable merit with respect to events before or during trial. We see no basis to challenge the court’s pretrial rulings, jury selection, the circuit court’s evidentiary rulings, or the jury instructions. No improper arguments were made to the jury.²

Similarly, we see no issues of arguable merit with respect to sentencing. Clayton’s sentence was within the maximum allowed. The record contains certified copies of Clayton’s

² The transcript of the afternoon portion of the August 28, 2017 trial proceedings that included *voir dire* was not part of the record at the time that appellate counsel submitted the no-merit report. However, pursuant to this court’s order, appellate counsel made arrangements for filing of the transcript, and the transcript was made part of the record. Also pursuant to our order, appellate counsel informed us in a letter dated November 5, 2019, that nothing in the transcript changes his conclusion that there is no arguable merit to any issue that could be raised on appeal. We have reviewed the transcript as part of our independent review of the record.

prior judgments of conviction as relevant to his repeater status. In sentencing Clayton, the circuit court explained how the sentence furthered the primary sentencing objectives, considered other relevant factors, and did not consider any inappropriate factors. *See State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197.

Our review of the record discloses no other potential issues for appeal.

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

IT IS FURTHER ORDERED that Attorney Mitchell Barrock is relieved of any further representation of Terry Lavon Clayton, Jr., in this matter. *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