



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

December 17, 2019

To:

Hon. Thomas J. Walsh
Circuit Court Judge
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
P.O. Box 23600
Green Bay, WI 54305-3600

Daniel Goggin II
Goggin & Goggin
P.O. Box 646
Neenah, WI 54957-0646

David L. Lasee
District Attorney
P.O. Box 23600
Green Bay, WI 54305-3600

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Kimberly C. Thomas
2624 Gabriel Ave., Apt. 5
Zion, IL 60099

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

2017AP1867-CRNM State of Wisconsin v. Kimberly C. Thomas
(L. C. No. 2015CM946)

Before Stark, P.J.¹

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).

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Counsel for Kimberly Thomas has filed a no-merit report concluding no grounds exist to challenge Thomas’s convictions for resisting a traffic officer by failing to stop her vehicle, obstructing an officer, and disorderly conduct.² Thomas has filed a response that complains generally about her appellate counsel’s failure to adequately communicate with her, but it does not otherwise identify any errors in the no-merit report. Upon an independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), this court concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

The charges arose from allegations that Thomas failed to immediately pull over when police attempted a traffic stop for speeding. The complaint further alleges that when Thomas stopped, she failed to comply with the officer’s orders, and she resisted attempts to place her in an “escort hold” while also screaming and yelling. Thomas was convicted upon a jury’s verdicts of the crimes charged. Out of a maximum possible twenty-one-month sentence, the circuit court imposed consecutive sentences totaling seventy days, with Huber privileges.

The no-merit report addresses whether there was sufficient credible evidence to support the jury’s verdicts and whether the circuit court properly exercised its sentencing discretion.

² This court previously placed this appeal on hold because the Wisconsin Supreme Court granted a petition for review of our decision in *State v. Trammell*, No. 2017AP1206-CR, unpublished slip op. (WI App May 8, 2018). The order noted that here, at trial, jury instruction WIS JI-CRIMINAL 140 was given to the jury. In *Trammell*, the supreme court granted review to address whether the holding in *State v. Avila*, 192 Wis. 2d 870, 535 N.W.2d 440 (1995)—that it is “not reasonably likely” that WIS JI-CRIMINAL 140 reduces the State’s burden of proof—is good law, or whether *Avila* should be overruled on the ground that it stands rebutted by empirical evidence. The supreme court has issued a decision in *Trammell*, holding “that WIS JI-CRIMINAL 140 does not unconstitutionally reduce the State’s burden of proof below the reasonable doubt standard.” *State v. Trammell*, 2019 WI 59, ¶67, 387 Wis. 2d 156, 928 N.W.2d 564.

Upon reviewing the record, we agree with counsel's analysis and conclusion that there is no arguable merit to these possible issues. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further.

An independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Daniel R. Goggin II is relieved of further representing Kimberly Thomas 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