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 I**

December 26, 2019

*To*:

Hon. Ellen R. Brostrom
Circuit Court Judge, Br. 6
821 W. State St.
Milwaukee, WI 53233

Hon. Mark A. Sanders
Circuit Court Judge
Safety Building, Rm. 620
821 W. State St.
Milwaukee, WI 53233-1427

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Thomas J. Erickson
Thomas J. Erickson Law Office
316 N. Milwaukee St., Ste. 550
Milwaukee, WI 53202

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

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

Juan Roberto Solis 390222
Stanley Correctional Inst.
100 Corrections Drive
Stanley, WI 54768

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

---

2018AP611-CRNM State of Wisconsin v. Juan Roberto Solis (L.C. # 2012CF2430)

Before Brash, P.J., Fitzpatrick and Donald, 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).**

Juan Roberto Solis appeals from a judgment of conviction entered after a jury found him guilty of first-degree reckless homicide as a party to a crime, armed robbery with threat of force

as a party to a crime, and possession of a firearm by a felon. *See* WIS. STAT. §§ 940.02(1), 939.05, 943.32(2), and 941.29(2) (2011-12).[1] He also appeals from an order denying his motion for postconviction relief. Solis's postconviction/appellate counsel, Thomas J. Erickson, has filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Solis filed a lengthy response.[2] Erickson filed a supplemental no-merit report addressing the issues in Solis's response. We have independently reviewed the record, the no-merit report, Solis's response, and the supplemental no-merit report, as mandated by ***Anders***.[3] We conclude that there is no issue of arguable merit that could be pursued on appeal. Therefore, we summarily affirm.

The criminal complaint alleged that three men—Solis, Deandre Davis, and Steven Taylor—robbed two men who were selling marijuana from a house (R.A., who lived in the house, and his guest, K.O.), fled the house, and shot one of several men who were chasing them. The complaint alleged that Taylor told the police that he, Solis, and Davis were the three robbers and that Solis was the man who pointed the gun in the direction of the people chasing them right before a gunshot was fired.[4]

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

[2] Solis's typed response is over one hundred pages long and also includes a forty-five-page appendix.

[3] Our review of this appeal was held in abeyance pending the Wisconsin Supreme Court's consideration of another defendant's appeal concerning jury instruction WIS JI—CRIMINAL 140, which was also used at Solis's trial. Based on the Wisconsin Supreme Court's resolution of that appeal, there would be no arguable merit to pursue postconviction proceedings based on the use of that jury instruction in this case. *See* ***State v. Trammell***, 2019 WI 59, ¶67, 387 Wis. 2d 156, 928 N.W.2d 564.

[4] Taylor did not testify at trial.

Prior to trial, Solis moved to suppress the "fruits of [his] illegal arrest," including his fingerprints. (Capitalization and bolding omitted.) At the hearing on his motion, the trial court heard evidence that law enforcement officers had a felony arrest warrant for Solis and forcibly entered his girlfriend's home after deducing that he was in the residence. After Solis testified that he was living in the home with his girlfriend and his daughters on the day of his arrest, the trial court concluded that Solis had standing to challenge the forced entry into the home. The trial court denied the suppression motion after finding that the officers had a reasonable belief that Solis was inside the home. *See* ***State v. Blanco***, 2000 WI App 119, ¶10, 237 Wis. 2d 395, 614 N.W.2d 512 ("An arrest warrant authorizes the police to 'enter the suspect's residence to execute the warrant if there is reason to believe he will be found there; the officer does not need a search warrant.'") (quoting ***United States v. Pallais***, 921 F.2d 684, 690 (7th Cir. 1990), and citing ***Payton v. New York***, 445 U.S. 573, 603 (1980)). The trial court also noted that a reasonable belief may not have been necessary, given that Solis was on supervision with the Department of Corrections. *See* ***State v. Pittman***, 159 Wis. 2d 764, 771-72, 465 N.W.2d 245 (Ct. App. 1990) (recognizing that parolees have a "diminished expectation of privacy under the [F]ourth [A]mendment" and concluding "that a judicially issued arrest warrant is not a constitutional prerequisite for the seizure of an alleged parole violator in his residence").

Solis also moved to suppress his identification by one of the victims, R.A. When R.A. first viewed a line-up that included Solis, he indicated that he could not identify anyone. Later, after talking with a detective, R.A. indicated that he wanted to change his answer. R.A. then identified Solis as the man who robbed and beat him. After conducting a motion hearing that included testimony from the detective, the trial court denied the motion. The trial court explained: "I do not think that the identification was unnecessarily suggestive and I do think that

it was reliable."[5] *See* ***Powell v. State***, 86 Wis. 2d 51, 64-65, 271 N.W.2d 610 (1978) (discussing analysis for evaluating whether an out-of-court identification of the defendant violated due process, including the need to determine if "the identification procedure was impermissibly suggestive").

The case proceeded to a joint jury trial for Solis and Davis. After the jury was selected, Davis decided to plead guilty. He later testified against Solis.

Solis testified in his own defense, denying that he was one of the three men who committed the robbery. He said he sold illegal drugs and that he had previously been to R.A.'s home twice to sell him marijuana, which explained why Solis's fingerprints were found on a plastic bag at R.A.'s home.

In addition, although Solis did not file a notice of alibi, he testified that on the day the crimes were committed, he spent time trying to start his grandmother's car and to get money to purchase a new battery for the car. Solis said that he ultimately purchased a car battery from an auto parts store and had it installed the afternoon the crimes were committed. Although the defense had not previously provided the State with a copy of the store receipt for the car battery, the trial court ultimately allowed the defense to introduce a copy of the receipt at trial as evidence of the purchase.[6] According to the time stamped on the receipt, the battery was purchased about two hours after the crimes were committed. In addition to introducing the

[5] We note that although R.A.'s identification of Solis was not suppressed, the defense was permitted to cross-examine R.A. about the lineup and the fact that R.A. did not initially identify Solis.

[6] The trial court denied the defense's request to introduce the actual receipt for the transaction, which was produced during the trial by someone watching the trial in the gallery, much to the surprise of the parties and the trial court.

battery receipt, the defense presented testimony about Solis's car trouble from Solis's brother, grandmother, and a friend.

The jury found Solis guilty of all three charges.[7] At sentencing, Solis faced maximum sentences totaling seventy years of initial confinement and forty years of extended supervision. The trial court imposed a global sentence of thirty-five years of initial confinement and ten years of extended supervision.[8]

Postconviction/appellate counsel was appointed for Solis, and she filed a no-merit report. We rejected the no-merit report after concluding that there would be arguable merit to raising several issues in a postconviction motion. *See* ***State v. Solis***, No. 2014AP1313-CRNM, unpublished op. and order (WI App Nov. 22, 2016). Specifically, we concluded that it would not be wholly frivolous to challenge witness K.O.'s in-court identification of Solis and trial counsel's failure to challenge that identification. We also concluded that it would not be wholly frivolous to allege that trial counsel was ineffective for not locating the original receipt for the car battery that Solis said he purchased on the day the crimes were committed.

New postconviction/appellate counsel was appointed for Solis. He filed a postconviction motion on Solis's behalf that addressed the issues we identified when we rejected the no-merit report. The motion also alleged that trial counsel performed deficiently by "failing to assert an alibi defense which was intertwined with the car battery receipt." Finally, the motion raised a

[7] Before the jury reached its verdicts, the State moved to remove the dangerous weapon enhancer from the homicide charge. Thereafter, Solis was found guilty of first-degree reckless homicide without the weapons enhancer.

[8] The Honorable Ellen R. Brostrom presided over the jury trial and sentenced Solis.

new issue, asserting that the State failed to provide exculpatory information suggesting that co-actor Davis at one point identified a different driver of the getaway vehicle than he identified at trial. The motion alleged that the State's failure to give the defense police reports about Davis's statements identifying a different driver constituted a ***Brady*** violation. *See* ***Brady v. Maryland***, 373 U.S. 83, 87 (1963) (holding that the State is obligated to disclose evidence favorable to the accused).

The State filed a response refuting Solis's claims, and Solis filed a reply brief. After considering the parties' briefs, the trial court denied the postconviction motion without holding a hearing.[9] First, the trial court addressed Solis's arguments concerning K.O.'s in-court identification of Solis. The trial court concluded:

> [I]t is the defendant's position that because [K.O.] made no pretrial identification, his in-court identification [of Solis] should have been suppressed as inherently suggestive. This is not a circumstance like that presented in ***McFowler v. Jaimet***, 349 F.3d 436 (7th Cir. 2003), upon which the defendant relies, where the witness's inconsistent testimony about her line-up identification cast doubt upon her in-court identification of the defendant. [K.O.] simply did not make an identification prior to trial. The defendant's in-court identification of the defendant at trial was made with "no doubt at all." [K.O.]'s testimony demonstrates that he had an independent basis for identifying the defendant as the perpetrator at trial. Trial counsel effectively cross-examined [K.O.] about his failure to identify the defendant previously, and therefore, the jury had the full benefit of weighing the credibility and reliability of his in-court identification. Moreover, [K.O.]'s identification of the defendant was bolstered by other evidence at trial, including the fingerprint evidence and the testimony of other witnesses (i.e. Deandre Davis, [R.A.]). Under the circumstances, the court finds that trial counsel's failure to pursue a motion to suppress [K.O.]'s in-court identification of the defendant was neither deficient nor prejudicial.

[9] The Honorable Mark A. Sanders denied the postconviction motion.

Second, the trial court addressed Solis's claim that trial counsel performed deficiently by not securing the original copy of the receipt for the car battery. The trial court concluded that even if it assumed that trial counsel performed deficiently, Solis had not shown that he was prejudiced. The trial court noted that Solis did not claim that the copy of the receipt "used at trial differed in any material way from the original receipt." The trial court said it was "pure speculation" to suggest that "the jury would have found his alibi more credible if the original receipt had been received into evidence."

Finally, the trial court addressed Solis's ***Brady*** claim and found that there had been no ***Brady*** violation. In doing so, the trial court accepted the State's representation that the State did not have any statements or reports from Davis indicating that another man was the driver of the vehicle.

After the trial court denied Solis's postconviction motion, postconviction/appellate counsel filed the detailed no-merit report that is now before this court. The no-merit report concludes that there would be no arguable merit to appealing the trial court's order denying the postconviction motion. In addition, the no-merit report concludes that there would be no arguable merit to assert that the trial court erroneously exercised its sentencing discretion.

The no-merit report thoroughly addresses each of those issues, providing citations to the record and relevant authority. For instance, the no-merit report addresses the sentence imposed, analyzing the trial court's compliance with ***State v. Gallion***, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. This court is satisfied that the no-merit report properly analyzes the issues it raises, and based on our independent review of the record, we agree with counsel's assessment that none of those issues presents an issue of arguable merit.

In his response to the no-merit report, Solis identifies thirty-three issues of concern.[10] For instance, he continues to argue some of the issues that were presented in the postconviction motion. He also criticizes trial counsel for not more effectively presenting Solis's testimony and for not adequately investigating and interviewing certain defense witnesses. In addition, he challenges the trial court's rulings on the two pretrial suppression motions discussed above.

Postconviction/appellate counsel filed a supplemental no-merit report addressing all thirty-three issues. This court is satisfied that the supplemental no-merit report adequately addresses the issues Solis has raised, and we agree with postconviction/appellate counsel's assessment that none of those issues presents an issue of arguable merit.

We will address one final issue that is not explicitly addressed in the no-merit reports: sufficiency of the evidence. Having reviewed the trial transcripts, we conclude that there would be no arguable merit to assert that the evidence, viewed most favorably to the State and the convictions, was "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." *See* ***State v. Poellinger***, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). At minimum, the testimony of Solis's co-actor, Davis, provided sufficient evidence to support the jury's verdict. Solis's fingerprints on the plastic bag in the victim's home also supported the jury's verdict, as did the testimony of R.A. and K.O.

[10] One of the issues Solis raised was the performance of the postconviction/appellate counsel who is currently representing him on appeal. Solis's ineffective assistance allegations about the performance of postconviction/appellate counsel are premature, and we decline to address them in this direct appeal.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit reports, affirms the conviction, and discharges appellate counsel of the obligation to represent Solis further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order are summarily affirmed. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Thomas J. Erickson is relieved from further representing Juan Roberto Solis 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*