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**DISTRICT I**

January 21, 2020

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

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2019AP483-CRNM      State of Wisconsin v. Duran M. Thomas (L.C. # 2015CF4952)

Before Brash, P.J., Kessler 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).**

Duran M. Thomas appeals from a judgment of conviction for one count of attempted first-degree intentional homicide by use of a dangerous weapon, as an act of domestic abuse. *See* WIS. STAT. §§ 940.01(1)(a), 939.32, 939.63(1)(b), and 973.055(1) (2015-16).<sup>1</sup> Thomas's appellate counsel, Pamela Moorshead, has filed a no-merit report pursuant to *Anders v.*

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

*California*, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32. Thomas was served with a copy of the no-merit report and advised of his right to file a response. He has not filed a response. We have independently reviewed the record and the no-merit report as mandated by *Anders*. We conclude that there is no issue of arguable merit that could be pursued on appeal. Therefore, we summarily affirm the judgment.

Thomas was charged with the aforementioned crime, as well as first-degree reckless injury by use of a dangerous weapon, armed burglary, and one count of being a felon in possession of a firearm. The criminal complaint alleged that Thomas broke into the home of his children’s mother and shot her multiple times. The complaint further alleged that earlier in the day, Thomas took the victim’s phone after the two had an argument, which was the basis for the burglary charge. When Thomas was apprehended at a residence eight months after the shooting, the police recovered a gun from a couch. Thereafter, the State filed an amended complaint that added a second count of being a felon in possession of a firearm.

Thomas entered into a plea agreement with the State pursuant to which he agreed to plead guilty as charged to the attempted homicide. In exchange, the State agreed to dismiss and read in the remaining four felonies.<sup>2</sup> Both sides were free to argue for an appropriate sentence.

Thomas completed a written guilty plea questionnaire and waiver of rights form. He also signed a written addendum that outlined additional rights and defenses that he was giving up. The trial court conducted a plea colloquy with Thomas and accepted his guilty plea.

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<sup>2</sup> The State said that it would “recommend full restitution to the victim.” Online court records indicate that after several postsentencing restitution hearings, the trial court ultimately set restitution at zero.

The trial court imposed a sentence of forty years of initial confinement and twenty years of extended supervision. This appeal follows.

The no-merit report addresses three issues: (1) whether Thomas's guilty plea was intelligently, knowingly, and voluntarily entered; (2) whether there was a factual basis for Thomas's guilty plea; and (3) whether the trial court erroneously exercised its sentencing discretion. The no-merit report thoroughly discusses those issues, including references to relevant statutes, case law, transcripts, and other court documents. This court is satisfied that the no-merit report properly analyzes the issues it raises.

With respect to Thomas's guilty plea, the no-merit report analyzes the trial court's compliance with WIS. STAT. § 971.08; *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14; and *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986). For instance, the report notes that the trial court, among other things, discussed with Thomas the maximum penalties for the crime and the constitutional rights he was waiving. The no-merit report further identifies the facts about the shooting that supported Thomas's guilty plea. Appellate counsel concludes that there would be no arguable merit to asserting that there was an insufficient factual basis for the plea or that Thomas's plea was not intelligently, knowingly, and voluntarily entered. Having reviewed the record, including the plea hearing transcript, we agree with appellate counsel's conclusions.

The no-merit report also addresses the sentence that was imposed, providing citations to the sentencing transcript and analyzing the trial court's compliance with *State v. Gallion*, 2004 WI 42, ¶¶9, 41-43, 270 Wis. 2d 535, 678 N.W.2d 197. Appellate counsel concludes that there would be no arguable merit to assert that the trial court erroneously exercised its sentencing

discretion, *see id.*, ¶17, or that the sentence was excessive, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with these assessments. The trial court considered the requisite sentencing factors and explained its sentencing decision. For instance, the trial court noted that the crime was particularly aggravated because Thomas shot the victim multiple times and then left the home, leaving a ten-year-old child and a three-month-old baby “alone to watch their mother potentially die.” The trial court also recognized that Thomas had previously been convicted of reckless homicide.

While the trial court imposed a near-maximum sentence—sixty years out of a possible sixty-five years—we are not persuaded that there would be arguable merit to challenging the length of the sentence. Thomas benefitted greatly from having four felonies dismissed and read in, which cut his total exposure in half.<sup>3</sup> Given the reduction in charges, Thomas’s criminal history, and the egregious facts of this case, there would be no arguable merit to challenging the imposed sentence on the grounds that it was overly harsh or excessive.

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 Thomas further in this appeal.

Upon the foregoing reasons,

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<sup>3</sup> At sentencing, the trial court said that Thomas had been facing a total of sixty years of imprisonment for the four dismissed felonies, but the amended criminal complaint and information indicate that Thomas’s total exposure for those crimes was sixty-five years because one charge included a five-year penalty enhancer.

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

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved from further representing Duran M. Thomas 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*