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February 3, 2020

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Thomas R. Tisher
239 N. Frenchtown Rd.
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You are hereby notified that the Court has entered the following opinion and order:

2018AP509-CRNM State of Wisconsin v. Thomas R. Tisher (L.C. # 2014CF1425)

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).

Thomas R. Tisher appeals a judgment convicting him after a jury trial of one count of manufacturing THC. He also appeals an order denying his postconviction motion. Appointed appellate counsel, Mark A. Schoenfeldt, filed a no-merit report, which included his request to

withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18),[1] and ***Anders v. California***, 386 U.S. 738, 744 (1967). Tisher responded to the report. Counsel then filed a supplemental no-merit report, to which Tisher also responded. After considering the no-merit reports and the responses, and after conducting an independent review of the record, we conclude that there are no issues of arguable merit that Tisher could raise on appeal. Therefore, we summarily affirm the judgment of conviction and the order denying the postconviction motion. *See* WIS. STAT. RULE 809.21.

The no-merit report addresses whether there would be arguable merit to a claim that there was insufficient evidence to support Tisher's conviction. When reviewing the sufficiency of the evidence, we look at whether "the evidence, viewed most favorably to the [S]tate 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. Zimmerman***, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (citation omitted). Based on our review of the trial transcript and other evidence, we conclude that there was sufficient evidence for the jury to find Tisher guilty of the charge. The police found marijuana plants growing in a shed on Tisher's property. The police also found three marijuana plants growing in an upstairs bedroom closet and two large Ziploc bags filed with marijuana under a pile of clothes. Accordingly, there would be no arguable merit to a claim that there was insufficient evidence presented at trial to support the verdict.

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

The no-merit report next addresses whether there would be arguable merit to an appellate challenge to Tisher's sentence. The circuit court sentenced Tisher to fifteen months of initial confinement and eighteen months of extended supervision. The court considered Tisher's rehabilitative needs, noting that he has a history of using marijuana for a long time, including for medical purposes, but also noting that medical use of marijuana is not legal in Wisconsin. The circuit court considered appropriate sentencing objectives and explained how the sentence it imposed was based on the various sentencing criteria applied to the facts of this case. *See* ***State v. Brown***, 2006 WI 131, ¶26, 298 Wis. 2d 37, 725 N.W.2d 262. Because the circuit court properly exercised its discretion, there would be no arguable merit to an appellate challenge to the sentence.

The no-merit report next addresses whether Tisher was denied the effective assistance of trial counsel. A defendant receives constitutionally ineffective assistance of trial counsel if counsel performs deficiently and counsel's deficient performance prejudices the defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). We agree with the no-merit report's conclusion that the record reveals no errors by trial counsel. Trial counsel vigorously made and argued objections, thoroughly cross-examined the witnesses, and effectively advocated on behalf of his client. There would be no arguable merit to a claim that Bell received ineffective assistance of trial counsel.

The no-merit report and the responses address whether the circuit court properly denied Tisher's motion to suppress the evidence found in his home on the grounds that the first of two search warrants obtained by the police to search Tisher's home and yard was invalid. At the suppression hearing, Door County Deputy Sheriff Connie Schuster testified that she went to Tisher's home to investigate a series of storage shed burglaries. She testified that she was

talking to some men working on a car in the neighbor's driveway when she looked over the fence into Tisher's backyard and saw an eight-burner grill designed for large events that matched the description of property that had been stolen. The police obtained the search warrant based on the fact that the stolen property was visible from the neighbor's driveway. In contrast, Tisher testified that the police were wandering around in his backyard and looking in his tool shed *before* they obtained the warrant. The circuit court denied the motion to suppress because it concluded that the central issue was credibility, and the circuit court found Officer Schuster's testimony that she saw the grill from the neighbor's driveway to be credible. The circuit court is the arbiter of witness credibility. *See* ***State v. Flynn***, 92 Wis. 2d 427, 437, 285 N.W.2d 710 (1979). Therefore, there would be no arguable merit to a claim that the circuit court erred in denying the motion to suppress.

Tisher argues in his response that the circuit court should have granted his motion to reconsider the order denying his motion to suppress. Tisher argued in his motion to reconsider that at a subsequent hearing in a different county where charges were brought against Tisher and he moved to suppress based on the same facts, the circuit court heard evidence from different police officers that they *had* been in his backyard and his shed before the warrant was issued. Regardless of whether other police officers were, in fact, in Tisher's backyard and/or shed, Schuster's testimony that *she* saw the stolen property from the neighbor's driveway still stands, and that was the basis for the circuit court's decision denying the motion to suppress. Moreover, the circuit court in the other county also denied the motion to suppress despite the additional testimony. Therefore, there would be no arguable merit to a claim that the motion to reconsider should have been granted.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Accordingly, we affirm the judgment and the order and relieve Attorney Mark A. Schoenfeldt of further representing Tisher.[2]

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

IT IS FURTHER ORDERED that Attorney Mark A. Schoenfeldt is relieved of any further representation of Tisher 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

[2] Tisher filed a *pro se* motion for relief pending appeal, asking that his extended supervision be terminated so that he can leave the State for medical treatment. We have no authority in the context of this appeal to terminate Tisher's extended supervision.