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**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](http://www.wicourts.gov)

**DISTRICT I/IV**

May 21, 2020

To:

Hon. Timothy G. Dugan  
Circuit Court Judge  
Br. 10  
821 W. State St.  
Milwaukee, WI 53233-1427

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

Michael J. Backes  
Law Offices of Michael J. Backes  
P.O. Box 11048  
Shorewood, WI 53211

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

Robert Michael Christophel 374244  
Green Bay Correctional Inst.  
P.O. Box 19033  
Green Bay, WI 54307-9033

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

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

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2018AP740-CRNM      State v. Robert Michael Christophel (L.C.# 2013CF5130)

Before Fitzpatrick, P.J., Blanchard, and Nashold, 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).**

Attorney Michael J. Backes, appointed counsel for Robert Christophel, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Christophel with a copy of the report, and he responded. We

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

conclude that this case is appropriate for summary disposition. *See* WIS. STAT RULE 809.21. After our independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

After a jury trial, Christophel was convicted of first-degree intentional homicide and burglary. On the homicide count the court sentenced him to life in prison without the possibility of release, and imposed a lesser sentence on the burglary count.

The no-merit report discusses whether trial counsel was ineffective by not raising a defense of mental disease or defect. The no-merit report discusses this issue by using information that current counsel asserts he received from trial counsel, and what appears to be current counsel's own assessment of Christophel's mental state. None of this information is in the record, and it was not provided to us in the form of an affidavit. Therefore, we do not further consider this information. The record itself does not show there is arguable merit to this issue.

The no-merit report discusses whether the circuit court erred by denying Christophel's motion to suppress his statement to police after his arrest. For the reasons explained in the no-merit report, there is no arguable merit to this issue. The State established at the hearing that Christophel was read his rights, and the circuit court properly found that his statement was voluntary.

The no-merit report discusses whether the circuit court erred by denying the defense motion to dismiss at the end of the trial. We affirm the verdict unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Poellinger*,

153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Credibility of witnesses is for the trier of fact. *Id.* at 504.

Without attempting to recite the evidence in detail here, we are satisfied that the verdict was supported by Christophel's statement, the testimony of the medical examiner, and the other fact witnesses presented by the State. There was nothing in the testimony that was inherently incredible and, if it was believed, it was sufficient to support the elements on first-degree intentional homicide and burglary, as a direct actor or an aider and abettor.

The no-merit report addresses whether the court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

In Christophel's response to the no-merit report, he first asserts that he was prejudiced by trial counsel's failure to call an expert witness to refute the State's expert as to the cause of death. Christophel does not give us any reason to believe that a different expert would have provided testimony more favorable to him. He has not shown there is arguable merit to this issue.

Christophel asserts that he was prejudiced by what he describes as trial counsel's "failure to allow" him to testify. The transcript of the last day of trial shows that, although Christophel had said the day before that he would testify, he had then changed his mind. The court had a discussion with Christophel personally in which it asked him whether he wanted to testify, and

he said he did not. The court reviewed his right to testify with him, and was satisfied that he was waiving that right. Christophel has not shown any basis to conclude that counsel did not allow him to testify.

Christophel asserts that the court erroneously exercised its discretion by giving him life without extended supervision, while his co-defendant received extended supervision after forty-five years in prison. Christophel asserts that he was punished merely because he exercised his right to a trial. At sentencing, the court explained that it allowed the co-defendant extended supervision because he “expressed true remorse,” but the court did not believe that Christophel had. This is a proper basis for the difference in sentencing. There is no arguable merit to this issue.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Backes is relieved of further representation of Christophel in this matter. *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*