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**DISTRICT IV**

October 1, 2020

To:

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Circuit Court Judge  
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Bobby L. Eleby  
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115 Doty Street  
Madison, WI 53703

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

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2019AP1298-CRNM      State of Wisconsin v. Bobby L. Eleby (L.C. # 2017CF111)

Before Fitzpatrick, P.J., Blanchard, and Graham, 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 Ellen Krahn, appointed counsel for Bobby Eleby, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18)<sup>1</sup> and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses the sufficiency of the

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

evidence to support the jury verdicts and whether there would be arguable merit to a challenge to the sentence imposed by the circuit court. Eleby was provided a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Eleby was convicted following a jury trial of strangulation, false imprisonment, three counts of battery, and disorderly conduct. The court sentenced Eleby to three years of initial confinement and three years of extended supervision.

The no-merit report addresses whether the evidence was sufficient to support the convictions. A claim of insufficiency of the evidence requires a showing that "the evidence, viewed most favorably to the state and the conviction, is 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." *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). We agree with counsel's assessment that there would be no arguable merit to an argument that that standard has been met here. The evidence at trial, including testimony by the victim and responding officers, if deemed credible by the jury, was sufficient to support the verdicts.

The no-merit report also addresses whether a challenge to Eleby's sentence would have arguable merit. Our review of a sentence determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). The record establishes that Eleby was afforded the opportunity to

address the court prior to sentencing. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including Eleby's character and criminal history, the seriousness of the offenses, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. R-125:32-39. The sentence was within the maximum Eleby faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances" (citation omitted)). We discern no erroneous exercise of the court's sentencing discretion.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Ellen Krahn is relieved of any further representation of Bobby Eleby 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*