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

2019AP547-CRNM State of Wisconsin v. Damonta D. Jennings
(L.C. # 2017CF3677)

Before Brash, P.J., Dugan and White, 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).

Damonta D. Jennings appeals from a judgment convicting him of first-degree reckless homicide with use of a dangerous weapon, as a party to a crime. His appellate counsel, Carl W. Chesshir, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18) and *Anders*

v. California, 386 U.S. 738 (1967).¹ Jennings received a copy of the report, was advised of his right to file a response, and did not do so. 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. We, therefore, summarily affirm.

The criminal complaint alleged that on May 5, 2016, police officers responded to a shooting complaint. When they arrived at the scene, the officers found a child on the floor in the living room of a home bleeding from the head. The child ultimately died. The cause of death was a gunshot wound, and the medical examiner deemed the manner of death a homicide.

The complaint detailed a statement made to police by Otha Brown, one of Jennings' co-defendants. Brown relayed that on the day of the shooting, he was a passenger in a car driven by Jennings. Another co-defendant, Tony Powell, was also in the car. Brown said that Jennings stopped the car to sell drugs. Shortly thereafter, a woman came out of a residence and scolded them. Jennings argued with the woman, and a man then came out of a home carrying a gun and shot at them. Initially Jennings drove off, but then he turned the car around, and the men got out, walked toward the home, and fired numerous rounds toward it. Brown told police that they were “pissed” and were shooting at the house that the man came out of. The child who died was inside the home at the time. Jennings was charged with first-degree reckless homicide with use of a dangerous weapon, as a party to a crime.

Jennings subsequently entered into a plea agreement with the State. Pursuant to the agreement, Jennings agreed to plead guilty to the charge, and the State agreed to move the circuit

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

court to dismiss and read-in charges against Jennings in two other cases that were pending at the time.² The State further agreed to recommend that Jennings serve a prison sentence but would not make a specific recommendation as to the length of the sentence. The circuit court conducted a plea colloquy, accepted Jennings' guilty plea, and found him guilty. The circuit court then sentenced him to thirty-five years of initial confinement and twenty years of extended supervision.

The no-merit report addresses the potential issues of whether Jennings' plea was knowingly, voluntarily, and intelligently entered and whether the circuit court properly exercised its discretion during sentencing. The no-merit highlights the circuit court's conclusion that even under the version of the facts offered by Jennings during the plea hearing, which differed from the version offered by Brown, there was an adequate basis to support the plea.³ We agree. This

² The plea questionnaire and waiver of rights form stated only that the charges in the pending cases against Jennings would be dismissed with no indication that they would be read in. At the plea hearing, however, the parties agreed that the negotiations were that the charges would be dismissed and read in at sentencing: one case stemmed from an armed robbery and the other involved possession with intent to deliver heroin. During the sentencing hearing, Jennings re-affirmed for the circuit court that this was his understanding of the plea agreement.

³ During the plea hearing, trial counsel advised the circuit court that Jennings denied he had a gun in his hand at the time of the shooting. According to trial counsel, Jennings pled guilty based on his role as party to a crime. Trial counsel explained:

And what happens, Mr. Jennings was selling drugs to someone on a street corner outside of his car, he never got out of his car. During this whole incident. There were some people in the neighborhood [who] objected to that transaction and what they perceived to be that transaction.

... While he was driving away, someone... came out and shot at the car that Mr. Jennings was riding in, with the two co[-]defendants [who were charged] and a fourth person who I don't think has been identified.

(continued)

court is satisfied that the no-merit report properly concludes the issues it raises are without merit and will not discuss them further.

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 Jennings further in this appeal.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Carl W. Chesshir is relieved of further representation of Jennings 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

After they were hit with the gunfire and the car was hit, the police confirmed that. He drove, Mr. Jennings was driving, he drove around, parked the car. The other three guys got out. He was in a situation just around the corner from where the shooting took place, so he couldn't see the shooting, but he heard it. And they came back to the car and he drove them away after they had done that.

In that way he's party to the crime that they committed, when they were shooting recklessly towards the building where this poor young [child] was killed.