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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**

December 22, 2020

To:

Hon. Dennis R. Cimpl  
Safety Building, Rm. 316  
821 W. State St. - Branch 19  
Milwaukee, WI 53233

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

Katie Babe  
Lakeland Law Firm, LLC  
N27W23957 Paul Rd., Ste. 206  
Pewaukee, WI 53072

Elizabeth A. Longo  
Assistant District Attorney  
821 W. State St.  
Milwaukee, WI 53233

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

Latanya Shanell Smith 571681  
Taycheedah Correctional Inst.  
P.O. Box 3100  
Fond du Lac, WI 54936-3100

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

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2019AP1894-CRNM      State of Wisconsin v. Latanya Shanell Smith (L.C. # 2017CF3128)

Before Dugan, Donald 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).**

Latanya Shanell Smith appeals a judgment convicting her of unlawfully possessing a firearm after being convicted of a felony. Appointed appellate counsel, Katie Babe, filed a no-merit pursuant to WIS. STAT. RULE 809.32 (2017-18),<sup>1</sup> and *Anders v. California*, 386 U.S. 738,

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

744 (1967). Smith responded to the report. After considering the no-merit report and the response, and after conducting an independent review of the record, we conclude that there are no issues of arguable merit that Smith could raise on appeal. Therefore, we summarily affirm. *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 Smith'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). The parties stipulated that Smith had previously been convicted of a felony. The jury heard an audio recording of a 911 call in which a woman said that a tall thin Black woman wearing black clothing and pushing a baby stroller with a child in it was pointing a gun at another woman's head. Milwaukee Police Officer Malcolm McNeil testified that he responded to the call and arrived at the location within a minute. He testified that he immediately saw Smith, who exactly fit the 911 caller's description. There was a gun and ammunition in a black bag tucked underneath her stroller. Based on our review of the trial transcripts and other evidence, we conclude that there was sufficient evidence for the jury to find that Smith was guilty of unlawfully possessing a firearm after being convicted of a felony. There would be no arguable merit to a claim that there was insufficient evidence presented at trial to support the verdict.

The no-merit report next addresses whether there would be arguable merit to an appellate challenge to Smith's sentence. The circuit court sentenced Smith to three years of initial confinement, which is the mandatory minimum sentence for her crime, and three years of

extended supervision. The circuit court explained that it had no choice but to impose the three-year term of initial incarceration because the legislature tied its hands with the mandatory minimum sentencing law. The circuit court also explained that three years of extended supervision was appropriate to help Smith address her mental health and anger issues. 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.

Smith argues in her response to the no-merit report that the gun should have been tested for fingerprints and DNA because it was not her gun and she did not know that it was in the storage compartment underneath her stroller. Smith points out that she went into a store for five to eight minutes shortly before she was arrested, leaving the stroller outside. She contends that several men standing around outside the store could have put the black bag with the gun and ammunition under the stroller. She also contends that more investigation should have been done to procure video from the store or other nearby locations, which she argues may have shown the identity of the person who put the bag under her stroller.

The reason Smith's arguments do not present arguably meritorious grounds for an appeal is that our job, as the appellate court, is to affirm the jury's verdict unless *no reasonable jury could have found guilt* beyond a reasonable doubt. *See Zimmerman*, 266 Wis. 2d 1003, ¶24. There was more than enough evidence for the jury to conclude that the gun was in Smith's possession because it was in her stroller, which she was actively using.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Accordingly, we affirm the judgment and relieve Attorney Katie Babe of further representing Smith.

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

IT IS FURTHER ORDERED that Attorney Katie Babe is relieved of any further representation of Smith 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*