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DISTRICT IV

December 30, 2020

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

2019AP1708-CRNM State of Wisconsin v. Nathaniel A. Showers (L.C. # 2016CF762)

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 Philip Brehm, appointed counsel for Nathaniel Showers, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Showers was sent a copy of the report and has

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

not filed a response. Upon consideration of the report and an independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, we affirm.

Showers was charged with burglary, as party to a crime, for participating in the robbery of a Madison residence. The case proceeded to a jury trial, and the jury found Showers guilty. The circuit court sentenced Showers to a six-year term of imprisonment consisting of four years of initial confinement and two years of extended supervision.

The no-merit report addresses whether the evidence was sufficient to support Showers' conviction. We agree with counsel that there is no arguable merit to this issue. We will not overturn a conviction "unless 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." *See State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Without reciting all of the evidence here, we are satisfied that it was sufficient.

The no-merit report addresses whether there is any basis for Showers to seek postconviction relief based on the State's failure to produce exculpatory evidence. Counsel explains that Showers believes that the State failed to produce exculpatory evidence that apparently relates to whether Showers had been involved in other criminal activity. Counsel further explains that Showers has not provided any more specific allegations to support this belief. We agree with counsel that, absent more specific allegations, there is no arguable basis to seek postconviction relief based on an alleged failure to produce exculpatory evidence.

The no-merit report addresses whether the trial testimony of Allison Davidson could provide a basis to pursue postconviction relief. For the reasons we now explain, we agree with counsel that there is no arguable merit to pursuing relief on this basis.

According to a police detective's report, Davidson made statements to the detective that implicated Showers as one of several individuals who transported stolen items to Davidson's residence after the burglary. When Davidson testified, she appeared to have little independent memory of her statements to the detective. The prosecutor repeatedly sought to refresh Davidson's recollection by having her review portions of the detective's report. It appeared that Davidson was sometimes testifying to what she had just read in the report rather than to her own recollection. Showers' trial counsel objected, and the circuit court sustained the objection. Ultimately, however, Davidson was allowed to testify, after reading parts of the report, that Showers was one of the individuals who transported stolen items to her residence.

Even assuming that Davidson's testimony was improper, we agree with no-merit counsel that, given the strength of the other evidence against Showers, the testimony was not significant. Multiple witnesses other than Davidson identified Showers as a participant in the burglary. Further, Showers had no alibi. We see no reasonable basis to claim that the jury's verdict might have been different absent Davidson's testimony. Accordingly, we see no non-frivolous basis to pursue relief based on her testimony.

The no-merit report next addresses whether there is any basis to seek postconviction relief based on the prosecutor's questioning of Travis Pollock. We agree with counsel that there is no arguable merit to this issue. Pollock was charged as one of Showers' accomplices. At Showers' trial, the prosecutor questioned Pollock regarding comments made about Showers

during Pollock's sentencing. However, Showers' trial counsel objected before Pollock could answer, and the circuit court sustained the objection. Thus, the jury did not hear any testimony from Pollock about the comments.

Our review of the record discloses no other issues of arguable merit with respect to events before or during trial. We see no arguable basis to pursue further proceedings based on the circuit court's pretrial rulings, jury selection, the circuit court's evidentiary rulings at trial, Showers' waiver of his right to testify, the jury instructions, or arguments made to the jury.

We turn to sentencing. The no-merit report addresses whether the circuit court erroneously exercised its sentencing discretion. We agree with counsel that there is no arguable merit to this issue. The circuit court discussed the required sentencing factors along with other relevant factors. See *State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. We see no basis to claim that the circuit court relied on any inappropriate or inaccurate information when sentencing Showers.

The no-merit report addresses whether there is any new factor that could support a modification to Showers' sentence. Nothing before us suggests any basis to argue the existence of a new factor. Accordingly, we agree with counsel that there is no arguable merit to this issue.

Finally, the no-merit report addresses whether Showers' trial counsel was ineffective. We are satisfied that the report properly analyzes this issue as having no arguable merit.

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 Philip Brehm is relieved of any further representation of Nathaniel Showers 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