



OFFICE OF THE CLERK
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

DISTRICT IV

June 17, 2021

To:

Hon. Todd L. Ziegler
Circuit Court Judge
Monroe County Courthouse
112 S. Court St., Rm. 301
Sparta, WI 54656

Shirley Chapiewsky
Clerk of Circuit Court
Monroe County Courthouse
112 S. Court St., Rm. 2200
Sparta, WI 54656

Kevin D. Croninger
District Attorney
112 S. Court St., #201
Sparta, WI 54656-1772

Dennis Schertz
Schertz Law Office
P.O. Box 133
Hudson, WI 54016

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

Eric W. Nyberg
710 2nd Avenue N. - Apt. 23
Onalaska, WI 54650

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

2020AP909-CRNM State of Wisconsin v. Eric W. Nyberg (L.C. # 2017CF655)

Before Fitzpatrick, P.J., Blanchard, and Kloppenburg, 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 Dennis Schertz, appointed counsel for Eric Nyberg, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

arguable merit to a claim that Nyberg was denied a fair trial or the effective assistance of counsel; the sufficiency of the evidence to support the jury verdicts; and any potential challenge to the circuit court's sentencing decision. Nyberg 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.

Nyberg was convicted following a jury trial of possession of more than forty grams of cocaine with intent to deliver as a party to a crime; possession of cocaine as a second offense; possession of THC as a second offense; and possession of drug paraphernalia. The court withheld sentence and ordered Nyberg to serve four years of probation, with 150 days of conditional jail time.

The no-merit report concludes that there would be no arguable merit to a claim that Nyberg was denied a fair trial or the effective assistance of counsel. Specifically, the no-merit report addresses whether there would be arguable merit to further proceedings based on: (1) the circuit court's determination that there was no issue regarding Nyberg's competency to proceed; (2) the jury instructions; (3) Nyberg's waiver of his constitutional right not to testify; (4) the court granting the State's request to orally amend the information to add party-to-a-crime liability to the possession with intent charge; or (5) trial counsel's representation of Nyberg. We conclude that nothing before us would support any non-frivolous arguments as to any of those issues.

The no-merit report also 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 arresting officers and a forensic scientist employed by the Wisconsin Department of Justice Crime Laboratory Bureau as to the testing of the substances recovered from Nyberg’s vehicle, if deemed credible by the jury, was sufficient to support the verdicts.

The no-merit report also addresses whether there would be arguable merit to further proceedings based on the circuit court’s sentencing decision. We conclude that this issue lacks arguable merit. This court’s review of a sentence determination begins “with the presumption that the [circuit] 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). Here, the circuit court explained that it considered facts pertinent to the standard sentencing factors and objectives, including Nyberg’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. The court withheld sentence as to each count of conviction and placed Nyberg on probation for a four-year term, with 150 days of conditional jail time. We discern no arguable merit to a challenge to the circuit court’s sentencing decision.

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 Dennis Schertz is relieved of any further representation of Eric Nyberg 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