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DISTRICT III

September 8, 2021

To:

Hon. William M. Gabler, Sr.
Circuit Court Judge
Electronic Notice

Gary King
District Attorney
Electronic Notice

Susan Schaffer
Clerk of Circuit Court
Eau Claire County
Electronic Notice

Dennis Schertz
Electronic Notice

Winn S. Collins
Electronic Notice

Davy L. Cole 587638
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

2018AP2132-CRNM State of Wisconsin v. Davy L. Cole (L. C. No. 2017CF629)

Before Stark, P.J., Hruz and Gill, 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).

Davy Cole appeals from an armed robbery conviction. Attorney Dennis Schertz has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20).¹ The no-merit report sets forth the procedural history of the case and addresses the sufficiency of the evidence at Cole's jury trial, counsel's performance, and Cole's sentence.

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

Cole was advised of his right to respond to the no-merit report, but he has not done so. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that counsel will be allowed to withdraw and that the judgment of conviction will be summarily affirmed. *See* WIS. STAT. RULE 809.21.

The State charged Cole as party to the crime of armed robbery, alleging that he had been the getaway driver for two other men who robbed a Domino's Pizza restaurant at gunpoint. Cole waived his right to counsel and represented himself at trial, with standby counsel. Among other evidence at trial, the State presented the testimony of a detective to whom one of Cole's co-defendants had described Cole's role in driving the co-defendants to the restaurant; the in-person testimony of that same co-defendant that it had been Cole's idea to rob the restaurant, and that Cole had provided masks and gloves to use during the robbery; the testimony of the other co-defendant who described how he and Cole had obtained the gun used in the robbery from Cole's uncle; and the testimony of a woman who had heard Cole discussing where to pick up the co-defendants after the robbery.

The jury returned a guilty verdict. The circuit court subsequently imposed a sentence of seven and one-half years' initial confinement and ten years' extended supervision, but it stayed that sentence subject to a term of ten years' probation with one year of conditional jail time.

We agree with counsel's description, analysis and conclusion that any challenge to the sufficiency of the evidence, counsel's performance, or Cole's sentence would lack arguable merit. Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Dennis Schertz is relieved of further representing Davy Cole 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