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DISTRICT I

September 21, 2021

To:

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Circuit Court Judge
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Clerk of Circuit Court
Milwaukee County
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Marcella De Peters
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Earl Jones 541207
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P.O. Box 200
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You are hereby notified that the Court has entered the following opinion and order:

2019AP1484-CRNM State of Wisconsin v. Earl Jones (L.C. # 2017CF4167)

Before Brash, C.J., Donald, P.J., and Dugan, J.

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).

Earl Jones appeals from a judgment of conviction for one count of attempted armed robbery and one count of armed robbery. Jones's appellate counsel, Marcella De Peters, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20), and *Anders v. California*, 386 U.S. 738 (1967).¹ Jones filed a response.² Upon consideration of the report, Jones's

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

² Jones initially filed a handwritten response and then followed it up with a typed version.

response, and an independent review of the record as mandated by *Anders*, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The criminal complaint charged Jones with one count of armed robbery and two counts of attempted armed robbery stemming from three separate events that occurred in late August and early September in 2017. For the first count in the complaint, which was attempted armed robbery, the complaint alleged that on August 22, 2017, officers responded to a robbery call at a McDonald's restaurant. Employees reported that a man entered the restaurant wearing a mask, approached the counter, and said, "Don't move," as he pulled a black gun from his waistband. The employees, however, did run and the man left the restaurant. The employees provided a description of the man to the police officers and the officers were able to review video from the restaurant showing that the suspect exited through a door and placed his hand on the glass. The officers processed the scene for evidence and recovered a print from the glass that was identified as Jones's left palm print. The complaint further alleged that the suspect in the video was wearing distinctive clothing and shoes that matched clothing subsequently recovered from Jones's vehicle.

On count two, which was armed robbery, the complaint alleged that on September 2, 2017, officers responded to a robbery call at a different McDonald's restaurant. Witnesses told police that a man entered the restaurant wearing a mask. The man told an employee to open the drawer and give him the money that was in the register and the safe. The employee told the man she did not know the code for the safe, but opened the register. The man took money out of it and left. The employee provided a description to the police officers and the officers were able to review video from the restaurant showing the suspect, who was wearing the same clothing as the

suspect in the August 22nd attempted robbery. The employee subsequently identified Jones in a lineup as the robber.

On count three, attempted armed robbery, the complaint alleged that on September 3, 2017, officers responded to a robbery call at a Wendy's restaurant. An employee reported that she was helping customers when she observed a man in front of her waiving a gun. The employee ran out of fear and said that the man did not get any money. The employee provided a description of the man to the police and identified Jones at a subsequent lineup as the man who attempted to rob her at work.

A jury found Jones guilty of counts one and two, but acquitted him on count three. The trial court sentenced him to the following consecutive sentences: three years of initial confinement and three years of extended supervision on the attempted armed robbery charge in count one; and three and one-half years of initial confinement and three years of extended supervision on the armed robbery charge in count two. This appeal follows.

The no-merit report addresses whether the trial court properly denied Jones's suppression motion and whether there was sufficient evidence to support the guilty verdicts. The report concludes with a discussion of whether the trial court properly exercised its sentencing discretion. This court is satisfied that the no-merit report properly determines the issues it raises are without merit. We discuss the suppression issue further only because it is the focus of Jones's response.

Jones brought a suppression motion challenging both the seizure and search of his vehicle and the validity of the search warrant that followed. After Jones turned himself in on a warrant, he was arrested. M.L., Jones's girlfriend, accompanied Jones when he turned himself in and

upon learning that the police planned to have Jones's vehicle towed, expressed concern about a backpack that was located inside. A detective asked M.L. for permission to retrieve the backpack, searched it, and then brought it to M.L. Nothing of evidentiary value was found inside the backpack.

Jones's vehicle was then towed and the police subsequently obtained a warrant to search it. When they conducted the search, the police located items of clothing that matched those worn by the suspect in the robberies.

In his no-merit response, Jones asserts that the police officer's retrieval of the backpack for M.L. amounted to an illegal warrantless search. He suggests that the backpack belonged to him. He further contends that it was unreasonable to impound and tow the vehicle and that the search warrant was invalid because it "was based on race and a partial palm print" and did not properly describe the items to be seized.

Following the suppression hearing where five witnesses testified, the trial court denied Jones's motion. Based on our review of the evidence set forth at the suppression hearing and the applicable case law, there would be no arguable merit to a challenge to the denial of the suppression motion. *See State v. Tullberg*, 2014 WI 134, ¶27, 359 Wis. 2d 421, 857 N.W.2d 120 (explaining that appellate review of a trial court's decision granting or denying a motion to suppress evidence presents a question of constitutional fact, to which we apply a two-step standard of review: first, we uphold the trial court's findings of historical fact unless they are clearly erroneous; and then we independently apply the relevant constitutional principles to those facts); *see also State v. Young*, 2009 WI App 22, ¶17, 316 Wis. 2d 114, 762 N.W.2d 736 (holding that we will "not reweigh the evidence or reassess the witnesses' credibility, but will

search the record for evidence that supports findings the trial court made, not for findings it could have made but did not” (citation omitted). The response that Jones submitted on this topic does not change our conclusion.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Jones further in this appeal.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Marcella De Peters is relieved from further representing Earl Jones 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