



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 I

October 12, 2021

To:

Hon. Jonathan D. Watts
Circuit Court Judge
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Winn S. Collins
Electronic Notice

John D. Flynn
Milwaukee County District Attorneys Office
821 W. State St. Rm. 405
Milwaukee, WI 53233-1427

Angela Conrad Kachelski
Electronic Notice

Andrew Scholz 355747
Waupun Correctional Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2019AP1725-CRNM State of Wisconsin v. Andrew Scholz (L.C. # 2015CF2023)

Before Brash, C.J., Dugan 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).

Andrew Scholz appeals a judgment convicting him after a jury trial of one count of first-degree intentional homicide, with use of a dangerous weapon, and one count of unlawfully possessing a firearm after being convicted of a felony. Appointed appellate counsel, Angela Conrad Kachelski, filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20);¹ *Anders v. California*, 386 U.S. 738, 744 (1967). Scholz was

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

provided with a copy of the no-merit report and advised of his right to respond, but he has not responded. After considering the no-merit report and conducting an independent review of the record as mandated by *Anders*, we conclude that there are no issues of arguable merit that Scholz could raise on appeal. Therefore, we summarily affirm the judgment of conviction. See WIS. STAT. RULE 809.21.

The no-merit report discusses all of the pre-trial proceedings, including Scholz's initial appearance, the preliminary hearing, the arraignment, and three other pretrial hearings. We agree with the report's analysis that there would be no potential issues for appeal based on the pre-trial proceedings.

The no-merit report addresses whether there was sufficient evidence adduced at trial to support Scholz'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). "If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn [the] verdict[.]" *Id.* (citation omitted).

Claytin Krimmer testified at trial as follows. He was driving around in a car with Scholz and Randall Radtke, who were his friends. Radtke was in the front passenger seat, Scholz was in the back seat, and Krimmer was driving. Scholz became angry with Radtke. Scholz and Radtke were intoxicated. Scholz put a gun to the back of Radtke's head and threatened Radtke. Scholz then shot Radtke in the back of the head, killing him. Krimmer stopped the car shortly after the

shooting and Scholz pulled Radtke's body out of the car and left it on the curb. The medical examiner testified that the gunshot wound to the back of Radtke's head showed that the gun was in contact with Radtke's head when he was shot. This evidence was more than sufficient to support the first-degree intentional homicide conviction.

As for unlawful possession of a firearm, Scholz stipulated that he had a prior felony conviction. Krimmer testified that Scholz had a gun before, during, and after the shooting. In addition, Krimmer's girlfriend, Rickie Jones, testified that Scholz and Krimmer had a gun at her kitchen table on the night the murder occurred. Based on our review of the trial transcript and other evidence, we conclude that there was sufficient evidence presented at the trial for the jury to find Scholz guilty of the charges. 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 also discusses the pre-trial and trial proceedings in depth, addressing whether there would be any potential issues based on voir dire, the opening jury instructions and statement, the witnesses' testimony, Scholz's stipulation that he was previously convicted of a felony, Scholz's decision not to testify, Scholz's motion to dismiss at the close of the State's evidence, and the closing jury instructions and arguments. We agree with the report's analysis that there would be no potential issues for appeal based on the pre-trial and trial proceedings.

The no-merit report next addresses whether there would be arguable merit to an appellate challenge to Scholz's sentence. For the first-degree intentional homicide conviction, the circuit court sentenced Scholz to life imprisonment, with eligibility for release on extended supervision after forty-two years, consecutive to any other sentence Scholz was serving. For unlawful possession of a firearm, the circuit court sentenced Scholz to a concurrent term of five years of

initial confinement and five years of extended supervision. The circuit court considered appropriate sentencing objectives and explained that the sentence it imposed was based on 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.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Kachelski of further representation of Scholz.

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 Angela Conrad Kachelski is relieved of any further representation of Scholz 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