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DISTRICT I

October 19, 2021

To:

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Circuit Court Judge
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
Electronic Notice

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Andre L. Washington 648552
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Oshkosh, WI 54903-3310

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

2020AP1743-CRNM State of Wisconsin v. Andre L. Washington (L.C. # 2019CF2023)

Before Brash, C.J., Donald, P.J., and White, 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).

Andre L. Washington appeals a judgment of conviction entered upon his guilty plea to robbery of a financial institution. Appellate counsel, Attorney Pamela Moorshead, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2019-20).¹ Washington did not file a response. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders*, we conclude that no arguably

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

meritorious issues exist for an appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

On April 29, 2019, a man entered a branch of the US Bank located in the 3700 block of West Villard Avenue in Milwaukee. He approached a teller, demanded money, and handed her a note with instructions. The teller placed \$2,120 in cash on the countertop, and the man took the money and fled. Police asked media outlets to air a still photograph of the robber recorded by the bank's surveillance video. Numerous citizens who saw the photograph contacted the police department and identified Washington as the robber. These citizens included S.D.W. and J.M.W., who said that Washington was their cousin; and M.A.G. and S.M.G., who said that they recognized the robber as Washington because he had dated their daughter. On May 1, 2019, police arrested Washington as he entered an automobile. A search incident to his arrest uncovered 0.89 grams of heroin in a baggie in his pocket. Further investigation revealed that Washington had been convicted of robbery by threat of force in Milwaukee County Circuit Court case No. 2016CF927. In the instant case, the State charged Washington as a repeat offender with robbery of a financial institution, a Class C felony, and possession of heroin, a Class I felony. *See* WIS. STAT. §§ 939.62(1), 943.87, 961.41(3g)(am).

Washington disputed the charges for some months, but at the final pretrial in October 2019, he decided to resolve the case with a plea agreement. He pled guilty to robbery of a financial institution, and the State agreed to recommend "substantial prison" and to take no position on any other provision of the sentence. The State also moved to dismiss the repeater allegation and to dismiss and read in the charge of possessing a controlled substance. The circuit court accepted Washington's guilty plea and granted the State's dismissal motions.

The matter proceeded to sentencing. Washington faced maximum penalties of forty years of imprisonment and a \$100,000 fine. *See* WIS. STAT. § 939.50(3)(c). The circuit court imposed a nine-year sentence bifurcated as six years of initial confinement and three years of extended supervision, and ordered him to serve the sentence consecutive to the reconfinement term that he was already serving following revocation of his extended supervision in case No. 2016CF927. The bank did not seek restitution, and none was ordered.

In the no-merit report, appellate counsel addresses the potential issues of whether Washington entered his guilty plea knowingly, intelligently, and voluntarily, and whether the circuit court properly exercised its sentencing discretion. This court is satisfied that appellate counsel properly analyzed these issues, and we agree with appellate counsel that further pursuit of these issues would lack arguable merit. Additional discussion of these issues is not warranted.

Appellate counsel does not discuss whether Washington could pursue an arguably meritorious claim that he was not competent to proceed in the circuit court. At Washington's initial court appearance, his trial counsel questioned whether Washington was competent to proceed in light of remarks that he made to trial counsel. A circuit court commissioner therefore referred Washington for a competency examination. The examining psychiatrist, Dr. Robert Rawski, filed a report in which he discussed Washington's history of malingering and concluded that Washington was feigning cognitive and intellectual deficits "in a concerted effort to appear incompetent to stand trial." Dr. Rawski determined that Washington had "average intelligence, intact cognitive skills, and a growing familiarity with the criminal justice system," and Dr. Rawski opined that Washington was competent to stand trial. Neither the State nor Washington challenged Dr. Rawski's opinion, and the circuit court found that Washington was competent.

“[A] defendant is incompetent if he or she lacks the capacity to understand the nature and object of the proceedings, to consult with counsel, and to assist in the preparation of his or her defense.” *State v. Byrge*, 2000 WI 101, ¶27, 237 Wis. 2d 197, 614 N.W.2d 477. This court will uphold a circuit court’s competency determination unless that determination is clearly erroneous. *See State v. Garfoot*, 207 Wis. 2d 214, 225, 558 N.W.2d 626 (1997). In light of the psychiatrist’s report and the standard of review, any further proceedings in regard to Washington’s competence would lack arguable merit.

Appellate counsel also does not discuss the circuit court’s postconviction order determining that Washington was not entitled to the 127 days of sentence credit that were awarded to him at sentencing for his time in custody from the date of his arrest on May 1, 2019, until September 4, 2019. In postconviction proceedings, the circuit court addressed a written inquiry from the Department of Corrections questioning the 127-day sentence credit award. The Department’s inquiry included a copy of a September 4, 2019 revocation order and warrant in case No. 2016CF927, showing that Washington received credit against his term of reconfinement in that case for his days in custody from May 1, 2019, until he returned to prison. Because dual credit on consecutive sentences is not permitted, *see State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988), the circuit court properly vacated the sentence credit award in this case. Further pursuit of this issue would lack arguable merit.

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or 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 summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved of any further representation of Andre L. Washington. *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