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DISTRICT I

January 11, 2022

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Milwaukee County
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Dondre S. Sharkey 657251
Winnebago Correctional Center
P.O. Box 219
Winnebago, WI 54985-0219

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

2020AP143-CRNM State of Wisconsin v. Dondre S. Sharkey (L.C. # 2016CF3237)

Before Donald, P.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).

Dondre S. Sharkey appeals a judgment convicting him after a jury trial of one count of robbery with use of force. Appointed appellate counsel, Hans Koesser, filed a no-merit report. *See* WIS. STAT. RULE 809.32 (2019-20);¹ *Anders v. California*, 386 U.S. 738, 744 (1967). Sharkey was advised of his right to respond to the report, but he has not responded. After considering the no-merit report and conducting an independent review of the record as mandated

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

by *Anders*, we conclude that there are no issues of arguable merit that Sharkey could raise on appeal. Therefore, we summarily affirm the judgment of conviction. See WIS. STAT. RULE 809.21.

We commend Attorney Koesser for his detailed discussion of the trial court proceedings and his extensive analysis of potential appellate issues in the no-merit report. The criminal complaint alleged that the victim, R.C., and her young son were waiting in a car outside an apartment for Sharkey and three other men to return to the car they had all been traveling in together. Sharkey returned to the car by himself and demanded that R.C. give him her wallet, which contained \$1,400 in cash. Sharkey repeatedly punched R.C. in the face, causing her pain and bruising. When R.C.'s son tried to help her, Sharkey pushed the child's head back, causing him to hit the back of his head against the car window. After a jury trial, Sharkey was found guilty of robbery with use of force.

The no-merit report addresses whether there was sufficient evidence to support the guilty verdict. 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).

A person who, with intent to steal, takes property from the owner, by using force, is guilty of robbery with use of force. WIS. STAT. § 943.32(1). At trial, R.C. testified that a group

of men, including her boyfriend, Larry Hines, took her and her then five-year-old son to run an errand. The group then stopped at an apartment. R.C. testified that she and her child waited in the car and the men went inside the apartment. R.C. testified that while they were waiting, one of the men, whom she knew by only his first name, Dondre, returned to the car and demanded that she give him her wallet, which contained \$1,400. He repeatedly punched her in the face, causing her swelling and bruising, and forcefully pushed her son's head back against the window when he tried to intervene. Sharkey then took her wallet. The jury also saw footage from a video camera that recorded the incident. Based on the trial testimony and video, there was sufficient evidence to support the verdict.

The no-merit report next addresses whether there would be arguable merit to an appellate challenge to the sentence imposed on Sharkey. The circuit court sentenced Sharkey to a total of six years of initial confinement and six 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.

The no-merit report next addresses whether there would be arguable merit to a claim that Sharkey's trial counsel was ineffective for not objecting to hearsay testimony from Detective Alexander Klabunde. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). Detective Klabunde testified that R.C. knew her assailant by only his first name, "Dondre." He further testified that he was able to ascertain that Dondre's last name was Sharkey because one of the other men who had been in the car prior to the robbery, Antonio Martin, told him Dondre's last name was Sharkey. The no-merit report notes that a hearsay objection could arguably have been

made by the defense to Detective Klabunde's testimony and notes that this hearsay testimony arguably helped established Sharkey's identity. However, counsel's failure to lodge such an objection would not be grounds for a claim of ineffective assistance of counsel because Sharkey's identity was not at issue in the trial. Sharkey did not dispute that he took R.C.'s wallet from her but argued that R.C. gave him the wallet for safekeeping. Therefore, there would be no arguable merit to his claim.

The no-merit report addresses five additional issues: (1) whether the circuit court erred in allowing R.C.'s son to testify; (2) whether R.C.'s son's failure to identify Sharkey in court rendered the State's case insufficient as a matter of law; (3) whether there would be arguable merit to an appellate challenge based on the fact that Sharkey turned down a plea offer from the State; (4) whether there would be arguable merit to a claim that the photo array used to identify Sharkey was impermissibly suggestive; and (5) whether the circuit court erred in instructing the jury. We agree with the no-merit report's in-depth analysis of these issues and its conclusion that they lack arguable merit.

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

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 Hans Koesser is relieved of any further representation of Sharkey 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