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DISTRICT I

June 7, 2022

To:

Hon. Joseph R. Wall
Circuit Court Judge
Electronic Notice

John D. Flynn
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George Christenson
Clerk of Circuit Court
Milwaukee County Safety Building
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Daveon J. Roberson 683575
Racine Youthful Offender Corr. Facility
P.O. Box 2500
Racine, WI 53404-2500

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

2020AP2047-CRNM State of Wisconsin v. Daveon J. Roberson (L.C. # 2018CF2429)

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).

Daveon J. Roberson appeals from a judgment convicting him of felony murder. *See* WIS. STAT. § 940.03 (2017-18).¹ His appellate counsel, Michael S. Holzman, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Roberson received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the no-merit report and an independent review of the

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

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 State charged Roberson with felony murder as a party to the crime and with operating a motor vehicle without the owner's consent stemming from events that occurred in November 2017. The predicate offense for the felony murder charge was armed robbery. Roberson was seventeen years old when he was alleged to have committed the crimes.

According to the criminal complaint, a witness told police officers that when she entered a residence, a masked gunman put a gun to her head and ordered her to stay in the living room. The witness said that she thought three or four individuals were involved in a robbery at the residence. The individuals eventually left and then one person returned and shot the victim, killing him.

Roberson subsequently admitted to police that he stole a van and used it to drive the individuals involved in the armed robbery and murder.² Roberson said he was approached on the day of the robbery by "Lil Reece," who asked if Roberson would drive the van for purposes of a robbery. In exchange for driving the van, Lil Reece bought Roberson a tank of gas. Roberson said that a third male, identified as "Rayvon," came along for the robbery.

Roberson was directed as to where to drop Lil Reece and Rayvon off and he waited for them to return. When Lil Reece and Rayvon got back into the vehicle, Roberson observed that

² The record indicates that Roberson was implicated in the crimes when his DNA was found in the van, which a witness connected to the crime scene.

they had guns, a backpack, and marijuana. Roberson drove them away from the scene and sold the stolen van the next day.

Roberson pled guilty to felony murder as a party to the crime. Pursuant to the plea agreement, the State agreed to dismiss the operating without owner's consent charge and additional charges that were pending against Roberson in a separate case. The State recommended that Roberson spend time in prison, but did not otherwise make a recommendation as to the duration of the sentence. The circuit court accepted Roberson's plea and ordered him to serve a sentence consisting of fifteen years of initial confinement and ten years of extended supervision.

The no-merit report addresses the potential issues of whether Roberson's plea was valid and whether the circuit court properly exercised its discretion during sentencing. The no-merit report also discusses whether the circuit court properly considered Roberson's failure to cooperate with the State's prosecution of his co-actors as an aggravating sentencing factor.

The plea colloquy, when augmented by the plea questionnaire and waiver of rights form, the addendum, and the applicable jury instructions, demonstrates Roberson's understanding of the information he was entitled to and that his plea was knowingly, voluntarily, and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *see also State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).³ As to sentencing, the record reveals that the circuit court considered and applied the relevant sentencing factors.

³ We note that the criminal complaint misstated the fine for felony murder as being \$50,000 when it was actually \$100,000. *See* WIS. STAT. § 939.50(3)(c) (2017-18). This misstatement was repeated during the initial appearance.

(continued)

The no-merit report addresses a sentencing remark by the circuit court to the effect that it could take into account Roberson’s failure to cooperate in the identification of his co-actors as an aggravating factor. The no-merit report then explains that “[i]t has long been the law in Wisconsin that, unless a defendant’s rights against self-incrimination are implicated ..., it is ‘entirely proper’ for a [circuit] court ‘to consider on sentencing, the defendant’s cooperativeness as manifested by his refusal to name his accomplices.’” See *State v. Kaczynski*, 2002 WI App 276, ¶9, 258 Wis. 2d 653, 654 N.W.2d 300 (citations omitted). This court is satisfied that the no-merit report properly concludes that the issues it raises are without merit.

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

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Michael S. Holzman is relieved of further representation of Daveon J. Roberson in this matter. See WIS. STAT. RULE 809.32(3).

The criminal complaint also misstated the length of confinement in prison that Roberson faced as “not exceed[ing] 30 years (75% of 40 years).” Pursuant to WIS. STAT. § 973.01(2)(b)10. (2017-18), Roberson actually faced a term of confinement in prison not to exceed forty-one years and three months (75% of 55 years, which was the maximum total length of the bifurcated sentence). The misstatement as to the total confinement time was subsequently corrected; however, the fine continued to be referenced as \$50,000. The circuit court did not ultimately impose a fine, and, in any event, Roberson waived his right to challenge the sufficiency of the complaint and the misstatement made during his initial appearance when he pled guilty. See *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (recognizing that under the “guilty-plea-waiver rule,” a defendant “waives all nonjurisdictional defects, including constitutional claims” by knowingly pleading guilty or no contest (citation omitted)).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals