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DISTRICT II

June 30, 2022

To:

Hon. David M. Reddy
Circuit Court Judge
Electronic Notice

Kristina Secord
Clerk of Circuit Court
Walworth County Courthouse
Electronic Notice

Hans P. Koesser
Electronic Notice

Zeke Wiedenfeld
Electronic Notice

Winn S. Collins
Electronic Notice

Jon M. Andersen
8705 Country View Ln.
Burlington, WI 53105

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

2020AP523-CRNM State of Wisconsin v. Jon M. Andersen (L.C. #2014CF56)

Before Gundrum, P.J., Grogan and Kornblum, 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).

Jon M. Andersen appeals from judgments convicting him of burglary contrary to WIS. STAT. § 943.10(1m)(a) (2013-14), criminal damage to property contrary to § 943.01(1) (2013-14) and theft contrary to § 943.20(1)(a) (2013-14), all as party to the crime. Andersen's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Andersen received a copy of the report and was advised of his

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

right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgments because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

After a jury trial, the circuit court sentenced Andersen to concurrent terms amounting to five years of initial confinement and three years of extended supervision. Andersen received sentence credit and was required to pay restitution.

Counsel's very thorough no-merit report addresses the following possible appellate issues: (1) issuance of the search warrant; (2) the circuit court's ruling admitting other acts evidence at trial; (3) the jury trial, including sufficiency of the evidence; and (4) whether the circuit court misused its sentencing discretion. After reviewing the record, we conclude that counsel's no-merit report properly analyzes these issues and correctly determines that these issues lack arguable merit. We will briefly address sufficiency of the evidence and the sentencing.

To the extent the jury had before it conflicting evidence as to whether the alleged offense occurred as the State claimed, it was the jury's function to weigh the evidence, draw reasonable inferences, and resolve conflicts in the testimony. *See State v. Poellinger*, 153 Wis. 2d 493, 506, 451 N.W.2d 752 (1990). The record reveals that each count, at least one witness gave testimony to support each requisite element. The evidence, "viewed most favorably to the state and the conviction, is [not] so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt."

Id. at 501. The standard is the same whether the evidence is direct or circumstantial. *Id.* We conclude that no arguable merit could arise from a challenge to the sufficiency of the evidence.

We agree with appellate counsel that the circuit court engaged in a proper exercise of sentencing discretion after considering various sentencing factors. *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (we review the sentence for a misuse of discretion); *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (sentencing objectives and factors discussed).

In addition to the issues discussed above and in counsel's no-merit report, we have independently reviewed the record. Our independent review of the record did not disclose any arguably meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgments of conviction, and relieve Attorney Hans P. Koesser of further representation of Andersen in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Hans P. Koesser is relieved of further representation of Jon M. Andersen in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals