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**DISTRICT II**

August 3, 2022

To:

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Circuit Court Judge  
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Clerk of Circuit Court  
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Kathleen L. Gere  
24423 75th St., Apt. 4  
Salem, WI 53168

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

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2019AP1156-CRNM      State of Wisconsin v. Kathleen L. Gere (L.C. #2016CM327)

Before Neubauer, J.<sup>1</sup>

**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).**

Kathleen L. Gere appeals from a judgment of conviction entered after a jury found her guilty of the following three misdemeanors: (1) resisting an officer; (2) disorderly conduct; and (3) possession of a controlled substance. Gere's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Gere was advised of her right to file a response and has elected not to do so. Upon consideration of the no-

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

merit report and our independent review of the record, 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.

Gere went to trial on four counts that were charged in two joined complaints: Resisting an officer, disorderly conduct, possession of a controlled substance, and misdemeanor bail jumping. The first three counts relate to a domestic incident between Gere and her adult daughter. The fourth count was charged when Gere failed to appear for a scheduled court date in the original case. The jury convicted Gere of the three original charges and acquitted her of bail jumping. The circuit court withheld sentence in favor of a two-year term of probation.<sup>2</sup>

Appointed appellate counsel's no-merit report thoroughly discusses whether any nonfrivolous claims arise from pretrial proceedings, jury selection, opening statements, evidentiary rulings at trial, the circuit court's colloquies concerning Gere's decisions to testify and to stipulate to several elements of bail jumping, closing arguments, or trial counsel's performance. The no-merit report includes a discussion of whether Gere's sentence was the result of an erroneous exercise of discretion or was unduly harsh or excessive. This court is satisfied that the no-merit report properly analyzes the above issues as being without arguable merit and we will not discuss them further.

The no-merit report addresses whether there was sufficient evidence to support the verdict. We will briefly discuss counsel's sufficiency analysis because the no-merit report does

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<sup>2</sup> It appears from the electronic circuit court docket entries that Gere successfully discharged from probation in May 2020.

not set forth the applicable legal standard and we do not agree with each and every representation made in the no-merit report.

In evaluating the sufficiency of the evidence, we must affirm the verdict unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). Credibility of witnesses is for the trier of fact. *Id.* at 504. Having independently reviewed the record in light of the essential offense elements, we agree with appellate counsel’s conclusion that ample evidence, including testimony from law enforcement and a lab expert, as well as stipulated facts concerning Gere’s bond, supports the resisting and possession convictions.

Additionally, we conclude that ample evidence supports the disorderly conduct conviction. Here, though appellate counsel’s no-merit report reaches the same conclusion, it contains seemingly inconsistent assertions that are not wholly accurate. Specifically, it is undisputed that the victim did not testify at trial. Appellate counsel’s no-merit report suggests that the only evidence of disorderly conduct “came in through [an officer] in the form of pure unadulterated hearsay.” That is inaccurate. As stated in the no-merit report, Gere, herself, testified that she and the victim had a “disagreement.” Looking at the totality of the circumstances, including that police were called, Gere was intoxicated, and testimony about

Gere's behavior with law enforcement, a reasonable juror could have found Gere guilty beyond a reasonable doubt.<sup>3</sup>

Our independent review of the record reveals no other potential issues of arguable merit.<sup>4</sup>

Therefore,

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 Vicki Zick is relieved from further representing Kathleen L. Gere in this matter. *See* WIS. STAT. RULE 809.32(3).

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*

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<sup>3</sup> The no-merit report concludes that no issue arises from the sufficiency of the disorderly conduct evidence because trial counsel did not object and, in fact, affirmatively told the circuit court he did not object to the officer's testimony on hearsay grounds because: "From a strategic standpoint, I did not feel it was necessary." We agree that this is consistent with our conclusion that the jury's disorderly conduct verdict was supported by sufficient evidence.

<sup>4</sup> In addition to the potential issues previously discussed, we conclude that no arguably meritorious challenge arises from either the jury instructions or the handling of questions from the jury during deliberations.