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**DISTRICT I**

October 25, 2022

To:

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Circuit Court Judge  
Electronic Notice

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Milwaukee County  
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Winn S. Collins  
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John D. Flynn  
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Pamela Moorshead  
Assistant State Public Defender  
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Shomeek L. Johnson 606101  
Racine Correctional Institution  
P.O. Box 900  
Sturtevant, WI 53177-0900

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

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2020AP1315-CRNM      State of Wisconsin v. Shomeek L. Johnson (L.C. # 2016CF1869)

Before Brash, C.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).**

Shomeek L. Johnson appeals a judgment, entered upon a jury's verdicts, convicting him of first-degree reckless homicide and first-degree reckless injury, as a party to the crimes. His appellate counsel, Pamela Moorshead, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20) and *Anders v. California*, 386 U.S. 738 (1967).<sup>1</sup> Johnson filed a response. Upon consideration of the report, Johnson's response, and an independent review of the record as

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

required by *Anders*, we summarily affirm the judgment because there is no arguable merit to any issue that could be pursued on appeal. *See* WIS. STAT. RULE 809.21.

As summed up in the no-merit report, this case arises from “a drug deal gone wrong,” which left one person dead and another a quadriplegic. The case proceeded to trial where the theory of defense was that while Johnson may have sold drugs to one of the victims, he was not the person who shot the victims.

The State argued that even viewing the evidence in the light most favorable to Johnson, he was still concerned in the commission of the crimes, and was therefore responsible. The jury found Johnson guilty of both charges and sentenced him to a combined total of forty years of initial confinement and twenty years of extended supervision.

The no-merit report discusses, among other things, whether there was sufficient evidence for findings of guilt and whether the circuit court properly exercised its discretion during sentencing. The report sets forth the applicable standard of review and the evidence satisfying the elements of both crimes. The report concludes with a discussion as to whether his sentences were the result of an erroneous exercise of discretion or could be considered excessive. This court is satisfied that the no-merit report properly analyzes the issues it raises as being without merit. Additionally, this court has concluded that no procedural errors occurred prior to trial. We will not discuss any of these potential issues further.

In his response to the no-merit report, Johnson, who was eighteen years old at the time of the incident, asserts that scientific evidence of prefrontal cortex human brain research constitutes newly discovered evidence or a new factor requiring an evidentiary hearing for purposes of resentencing. He argues that his youthful age at the time of the crimes, reflecting his diminished

capacity and culpability in the crimes, is a mitigating factor that if not considered violates the cruel and unusual punishment and equal protection clauses of the Constitution.

First, existing case law prohibits the circuit court from relying upon scientific research on brain development in emerging adults as a new factor providing a basis for sentence modification because the research and its conclusions were well known at the time of Johnson's sentencing in 2018. *See State v. McDermott*, 2012 WI App 14, ¶¶16-22, 339 Wis. 2d 316, 810 N.W.2d 237. Additionally, the information does not constitute newly discovered evidence because the circuit court was aware of and specifically remarked on brain development during sentencing when it said:

Research and science is teaching us more and more about brain development and for most people, brain development doesn't complete until their mid 20s including the areas of the brain that help us assess risk, that help us control impulses. Unfortunately, the information I have about Mr. Johnson's character in great part consists of his contacts with the criminal justice system as a juvenile and a young adult and they are not good.

We conclude that there would be no arguable merit to further pursuit of these issues.

Johnson additionally contends that the circuit court did not adequately account for the details surrounding his juvenile adjudications and takes issue with the fact that a presentence investigation (PSI) report was not prepared, even though neither party requested one. He further argues that his young age and developing brain should have been deemed mitigating factors at sentencing.

Appellate review of a sentencing decision is limited to determining whether the circuit court erroneously exercised its discretion in imposing sentence. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. A circuit court is not required to order a PSI. *See*

*State v. Jackson*, 187 Wis. 2d 431, 439, 523 N.W.2d 126 (Ct. App. 1994). Moreover, to the extent that the court did not weigh the sentencing factors the way Johnson wanted, this does not equate with an erroneous exercise of discretion. The weight to be given to each sentencing factor remains within the circuit court's wide discretion. See *State v. Stenzel*, 2004 WI App 181, ¶9, 276 Wis. 2d 224, 688 N.W.2d 20. These claims do not amount to issues of arguable merit.

Our review of the record discloses no other potential issues for appeal. This court has reviewed and considered the various issues raised by Johnson. To the extent we did not specifically address all of them, this court has concluded that they lack sufficient merit or importance to warrant individual attention. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Johnson 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 Pamela Moorshead is relieved of further representation of Shomeek L. Johnson 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*