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DISTRICT I

October 25, 2022

To:

Hon. David A. Feiss
Circuit Court Judge
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County Safety Building
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Annice Kelly
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Emmanual Biz York 506901
Prairie Du Chien Correctional Inst.
P.O. Box 9900
Prairie du Chien, WI 53821

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

2021AP729-CRNM State of Wisconsin v. Emmanual Biz York
(L.C. # 2020CF41)

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).

Emmanual Biz York appeals a judgment convicting him after a jury trial of unlawfully possessing a firearm after being convicted of a felony and misdemeanor disorderly conduct, with use of a dangerous weapon. Attorney Annice Kelly filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20);¹ *Anders v. California*, 386 U.S. 738, 744 (1967). York was provided with a copy of the no-merit report and advised of his right

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

to respond, but he has not responded. After considering the no-merit report and conducting an independent review of the record as mandated by *Anders*, we conclude that there are no issues of arguable merit that York could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

A criminal complaint charged York with two counts of unlawfully possessing a firearm after being convicted of a felony, one count of endangering safety by use of a dangerous weapon, and one count of misdemeanor disorderly conduct with use of a dangerous weapon. The latter two counts were charged as acts of domestic abuse. After a trial, the jury acquitted York of one count of unlawfully possessing a firearm and one count of endangering safety, but found him guilty of one the counts of unlawfully possessing a firearm and one count of misdemeanor disorderly conduct. The circuit court sentenced York to two years and six months of initial confinement and six months of extended supervision for unlawfully possessing a firearm. The circuit court also sentenced York to four months in jail for disorderly conduct, to be served concurrently.

The no-merit report addresses whether there was sufficient evidence adduced at trial to support York's convictions. 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).

At trial, L.C. testified that she and York used to have a romantic relationship. She testified that he confronted her at a tire shop where she went to get new tires for her car. L.C. testified that she armed herself with a crowbar as he approached because she was afraid of York and saw that he had a handgun in his hand. L.C. testified that York threatened to shoot her, and then lifted the handgun into the air and fired one shot. Based on L.C.'s testimony, and our review of the other trial testimony and evidence, we conclude that there was sufficient evidence presented at the trial for the jury to find York guilty of the charges. Therefore, there would be no arguable merit to a claim that there was insufficient evidence presented at trial to support the verdicts.

The no-merit report also addresses whether there would be arguable merit to an appellate challenge to York's sentence. In framing York's sentence, the circuit court considered the seriousness of the offenses, York's character, and the need to protect the community. The circuit court noted that York had children to care for and that he had positive attributes. The circuit court also heard the victim's request for a sentence that was not too lengthy. Ultimately, however, the circuit court concluded that York violated a clear prohibition against carrying a firearm and, therefore, a sentence of probation was inappropriate. The circuit court then sentenced York to an aggregate term of thirty months of initial incarceration and thirty six months 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.

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

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 Annice M. Kelly is relieved of any further representation of York 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