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DISTRICT I

November 22, 2022

To:

Hon. T. Christopher Dee
Circuit Court Judge
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Winn S. Collins
Electronic Notice

Michael E. Covey
Electronic Notice

Michael Brown
3360 N. 39th. St.
Milwaukee, WI 53218

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

2021AP1627-CRNM State v. Michael Brown (L.C. # 2018CF350)

Before Donald, P.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).

Michael Brown appeals a judgment convicting him after a jury trial of one count of second-degree reckless injury, with use of a dangerous weapon, and one count of unlawfully possessing a firearm after being convicted of a felony. Attorney Michael Covey 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). Brown was provided with a copy of the no-merit report and advised of his right to respond, but he has not responded. After considering the

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

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 Brown could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The complaint alleged that Brown was involved in a physical altercation with L.S. at a Family Dollar store during which Brown shot L.S. twice, hitting his legs. After a jury trial, Brown was convicted of the two charges against him. The circuit court sentenced Brown to an aggregate term of five years of initial incarceration and three years of extended supervision.

The no-merit report addresses whether there was sufficient evidence adduced at trial to support Brown's conviction. 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.S. testified that he was at the Family Dollar store with his girlfriend A.T., their three-year-old daughter, and a family friend. L.S. testified that he and Brown got into a fist fight because Brown was having a verbal argument with A.T. L.S. told the jury that after the fight broke up, he left with his family and their friend in their car, but realized they left an item behind at the store. After they returned to the store, Brown also arrived in a car. L.S. testified that he and Brown exchanged words in the parking lot, and that Brown then pulled out a gun and shot him twice in the back of his legs as he turned to run away. L.S. also testified about his

identification of Brown in a photo array several days after the shooting and identified Brown in court. Based on our review of the trial transcript and other evidence, as partially summarized here, we conclude that there was sufficient evidence presented at the trial for the jury to find Brown guilty of the charges. There would be no arguable merit to a claim that there was insufficient evidence presented at trial to support the verdict.

The no-merit report also addresses whether there would be arguable merit to an appellate challenge to Brown's sentence. In framing Brown's sentence, the circuit court considered the aggravating and mitigating factors applicable to the case. The circuit court noted that while Brown had a criminal history, that history was quite old and Brown had not been engaged in antisocial behavior for a long period of time. The circuit court also noted that Brown had positive aspects to his character, such as raising his children and grandchildren. The circuit court sentenced Brown to thirty months of initial incarceration and eighteen months of extended supervision on each count, to be served consecutively. 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.

The no-merit report also addresses whether there are any other potential issues that Brown could raise on appeal. The report concludes that there are not any such issues. Our independent review of the record also reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Covey of further representation of Brown.

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 Michael Covey is relieved of any further representation of Brown 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