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DISTRICT I

April 4, 2023

To:

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Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Lauren Jane Breckenfelder
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Desmond Al Robinson 604409
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:

2021AP1385-CRNM State of Wisconsin v. Desmond Al Robinson
(L.C. # 2017CF5037)

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).

Desmond Al Robinson appeals from his judgment of conviction entered after he pled guilty to first-degree recklessly endangering safety and possession of a firearm by a felon. His appellate counsel, Attorney Lauren Jane Breckenfelder, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).[1] Robinson was advised of his right to file a response, but he did not do so. Upon this court's independent

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

review of the record as mandated by ***Anders***, and counsel's report, we conclude there are no issues of arguable merit that could be pursued on appeal. We, therefore, summarily affirm the judgment.

In October 2017, K.A.F. reported to police that he had been shot by Robinson, whom he identified as his brother. Robinson started shooting at K.A.F. during an argument over money that K.A.F. allegedly stole from Robinson. One of the shots struck K.A.F. behind the ear; the bullet travelled through his face and exited approximately an inch away from his eye.

Robinson was arrested and charged with first-degree reckless injury with a dangerous weapon, first-degree recklessly endangering safety with a dangerous weapon, and being a felon in possession of a firearm, all with a habitual criminal repeater penalty enhancer.

Robinson filed a motion to suppress his custodial statement to police, during which he had confessed to the shooting. He alleged that he was under the influence of medication during the interview because he was on alprazolam for depression, and he was using a Percocet patch for pain at the time. After viewing the video of the interview, the trial court found that Robinson was "coherent" and that the officer conducting the interview had not used any coercive tactics. The court, therefore, denied the motion to suppress.

Robinson subsequently chose to resolve this matter with a plea agreement. In exchange for Robinson pleading guilty to first-degree recklessly endangering safety and being a felon in possession of a firearm, the State agreed to dismiss the dangerous weapon and habitual criminal repeater enhancers that were attached to those charges, and to dismiss the charge of first-degree reckless injury with a dangerous weapon as a habitual criminal repeater; however, they would all

be read in at sentencing. Additionally, the State would recommend five years of initial confinement, with the term of extended supervision to be left to the discretion of the trial court.

The trial court accepted Robinson's pleas, and sentenced him to four years of initial confinement followed by three and one-half years of extended supervision for each count, to be served concurrently. This no-merit appeal follows.

Appellate counsel addresses three issues in the no-merit report: whether there would be arguable merit to challenging the trial court's denial of Robinson's motion to suppress his custodial statement to the police; whether there would be arguable merit to appealing the validity of Robinson's pleas; and whether there would be arguable merit to a claim that the trial court erroneously exercised its discretion in sentencing Robinson. We agree with appellate counsel's analysis that there would be no arguable merit to an appeal of any of these issues.

First, with regard to Robinson's motion to suppress, Jones did not assert that he did not receive the required ***Miranda***[2] warnings; rather, he contended that the medications he was on during the interview affected his ability to understand the consequences of waiving his ***Miranda*** rights. The waiver of ***Miranda*** rights is deemed to be knowing, voluntary and intelligent if it is "'the product of a free and deliberate choice rather than intimidation, coercion, or deception,' and has 'been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.'" ***State v. Ward***, 2009 WI 60, ¶30, 318 Wis. 2d 301, 767 N.W.2d 236 (citation omitted).

[2] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

Here, the trial court viewed the video of Robinson's custodial interview, finding that Robinson was "coherent" and that the officer conducting the interview had not used any coercive tactics. Findings by the trial court "regarding the factual circumstances that surrounded the making of the statements" are given deference on review. *See* ***State v. Hoppe***, 2003 WI 43, ¶34, 261 Wis. 2d 294, 661 N.W.2d 407. Thus, there would be no meritorious argument for a claim that the trial court erred in denying Robinson's motion to suppress.

With regard to Robinson's pleas, the thorough plea colloquy by the trial court complied with the requirements set forth in WIS. STAT. § 971.08 and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. With regard to sentencing, the record reflects that the trial court considered relevant sentencing objectives and factors. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197; ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Furthermore, the terms of imprisonment imposed by the trial court are within the maximums authorized by law, and therefore, there would be no arguable merit to a claim that Robinson's sentence is unduly harsh or unconscionable. *See* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449.

Our independent review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Robinson 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 Lauren Jane Breckenfelder is relieved of further representation of Robinson 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