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**DISTRICT II**

May 3, 2023

To:

Hon. Angela W. Sutkiewicz  
Circuit Court Judge  
Electronic Notice

Chris Koenig  
Clerk of Circuit Court  
Sheboygan County Courthouse  
Electronic Notice

Angela Dawn Chodak  
Electronic Notice

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Joel Urmanski  
Electronic Notice

Arthur Ball, #660045  
Stanley Correctional Inst.  
100 Corrections Dr.  
Stanley, WI 54768

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

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2020AP1325-CRNM      State of Wisconsin v. Arthur Ball (L.C. #2015CF721)

Before Gundrum, P.J., Neubauer and Lazar, 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).**

Arthur Ball appeals from a judgment, following a jury trial, convicting him of armed robbery, burglary while armed with a dangerous weapon, aggravated battery with the use-of-a-dangerous-weapon enhancer, and two counts of felon in possession of a firearm. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Ball filed a response. After reviewing the record, counsel's

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

report, and Ball's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Ball was convicted following a jury trial of armed robbery, burglary while armed with a dangerous weapon, aggravated battery with the use-of-a-dangerous-weapon enhancer, and two counts of felon in possession of a firearm. Ball was missing a pair of expensive jeans, and he confronted, pistol-whipped, and pointed a gun at his former roommate Sam,<sup>2</sup> took all of Sam's money, and then chased him. Ball and another individual then broke into the previous residence in the middle of the night and attacked another former roommate, Oscar, hit him with a gun, took all of his money, and beat him so severely that his eye had to be surgically removed. The trial court sentenced Ball to an aggregate sentence of twenty-five years' initial confinement and twenty-five years' extended supervision.

The no-merit report addresses whether trial counsel overlooked any potential meritorious defenses, motions, or objections; whether there were any adverse pretrial rulings against Ball; whether Ball was prejudiced by a late disclosure of a discovery disk; whether there were any issues with jury selection; whether the circuit court properly excluded a defense witness from testifying; whether Ball properly waived his right to testify; whether the circuit court properly denied Ball's request to dismiss his attorney after the close of evidence but before closing arguments; whether there were any jury instruction issues; whether the evidence was sufficient to support Ball's convictions; and whether the court properly exercised its discretion at sentencing.

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<sup>2</sup> Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use pseudonyms when referring to the victims in this case ("Sam" and "Oscar").

This court is satisfied that the no-merit report properly analyzes the issues it raises as without arguable merit. We will, however, briefly address two of the issues from the no-merit report.

First, as to whether the evidence was sufficient to support Ball's convictions, when reviewing the sufficiency of the evidence, we may not substitute our judgment for that of the jury "unless the evidence, viewed most favorably to the state 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. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Our review of the trial transcript persuades us that the State produced ample evidence to convict Ball of his crimes. That evidence included testimony from both former roommates who identified Ball as the perpetrator, other witnesses, and law enforcement. We agree with counsel that a challenge to the sufficiency of the evidence would lack arguable merit.

Second, in regard to the circuit court's sentencing discretion, our review of the record confirms that the court appropriately considered the relevant sentencing objectives and factors, focusing particularly on Ball's criminal record and "the brutality of the crimes ... how extremely concerning, serious, and violent they were." *See State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The resulting sentence was within the maximum authorized by law. *See State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. The sentence was not so excessive so as to shock the public's sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Therefore, we agree there would be no arguable merit to a challenge to the court's sentencing discretion.

As noted, Ball filed a response to the no-merit report. In it, Ball argues there is an issue of arguable merit that trial counsel was ineffective for failing to present evidence that would contradict the State's witnesses' testimony. Specifically, Ball asserts trial counsel did not elicit testimony that Oscar originally told officers he did not know who attacked him but then later admitted it was Ball. This assertion is belied by the record. Not only did trial counsel ask Oscar about differing statements, but trial counsel elicited testimony from an officer, who readily agreed Oscar initially advised him that he did not know who attacked him but later admitted it was Ball.

Ball also asserts trial counsel was ineffective for failing to elicit testimony that Oscar received consideration from the State for his testimony against Ball. This assertion is also belied by the record. Oscar unequivocally testified that he was not offered and did not receive consideration for his testimony. Ball's trial counsel also called an employee from the district attorney's office who was present at a meeting with Oscar and the assistant district attorneys. She testified that Oscar asked for consideration for his testimony at that meeting, but the State refused.

Ball then asserts trial counsel was ineffective for failing to introduce evidence that when Oscar's girlfriend testified at trial about Oscar's attack, it was the first time she said she saw a gun. However, during trial, defense counsel elicited testimony from an officer that Oscar's girlfriend only reported to officers what she heard because she was in another room during Oscar's assault. The officer confirmed Oscar's girlfriend did not indicate she saw any guns. In any event, Oscar testified that he was hit with a gun during his assault. *See Poellinger*, 153 Wis. 2d at 507.

Ball also argues trial counsel was ineffective for failing to elicit testimony that Sam's statements changed over time. Again, this assertion is belied by the record. At trial, Sam attempted to minimize what happened, explaining:

I don't know what side I'm supposed to, like, be on per se, you know. Like, I have, you know -- like I said, I don't have nothing bad to say about [Ball] because there was times when, you know, I didn't have nothing, and that's the guy that helped me, you know, eat.

However, at trial, Sam did testify Ball pointed a gun at his head, pistol-whipped him, took \$190 from his pockets, and chased him into two establishments where he tried to hide. Two civilian witnesses confirmed that a man ran into their establishments on that night, attempting to hide. Additionally, a detective testified that when Sam gave his statement, he was panicked, distraught, had tears in his eyes, and repeatedly said he thought Ball was going to kill him. The detective had to secretly drop Sam off at a friend's house and promise not to reveal his location. The detective also felt a lump on Sam's head where Sam told her Ball had pistol-whipped him.

Ball then argues trial counsel was ineffective because Oscar's medical records were not introduced into evidence at trial, and therefore the jury did not hear that Oscar was legally blind in one eye before the assault or that he was using alcohol and marijuana. Again, Ball's argument is belied by the record. Not only were the medical records admitted into evidence at trial, but, per the jury's request, the records were sent back to the jury room during deliberations. The medical records contained all the information Ball alleges trial counsel failed to introduce to the jury—including that Oscar was legally blind in one eye and used alcohol and marijuana. The jury considered the medical records.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.<sup>3</sup> Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Angela Dawn Chodak<sup>4</sup> of further representation in this matter.

Upon the foregoing reasons,

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 Angela Dawn Chodak is relieved of further representation of Arthur Ball 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> To the extent Ball's response includes assertions not specifically addressed in this opinion, we have considered those assertions and conclude they would not support any issues of arguable merit.

<sup>4</sup> Attorney Chodak's name changed during the pendency of this no-merit appeal from Attorney Angela Dawn Wenzel to Attorney Angela Dawn Chodak.