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DISTRICT II

May 24, 2023

To:

Hon. Bruce E. Schroeder
Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
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Douglas C. McIntosh
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Lathan S. Ward #357436
Kettle Moraine Correctional Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2020AP795-CRNM State of Wisconsin v. Lathan S. Ward (L.C. #2018CF908)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Lathan S. Ward appeals from a judgment of conviction for false imprisonment, substantial battery, and intimidating a victim by use or attempted use of force, all by use of a dangerous weapon. *See* WIS. STAT. §§ 940.30, 940.19(2), 940.45(1), 939.63(1)(b) (2017-18).¹ Ward's appellate counsel filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738

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

(1967), and WIS. STAT. RULE 809.32.² Ward filed numerous responses.³ We directed counsel to file a supplemental no-merit report addressing several issues. Ward filed a response to that supplemental no-merit report. We have independently reviewed the record, the no-merit report, the supplemental no-merit report, and Ward's responses as mandated by *Anders*. We conclude that there is no issue of arguable merit that could be pursued on appeal. Therefore, we summarily affirm.

The criminal complaint alleged that Ward and a woman named A.B. went to the home of A.B.'s former fiancé, A.C., and that Ward "pistol whipped" A.C., causing significant injuries. The case proceeded to a jury trial, where the theory of defense was that Ward was not the man who accompanied A.B. to the home and beat A.C. A.B. and A.C. both identified Ward as the perpetrator, and Ward did not testify.

The jury found Ward guilty of the aforementioned crimes but acquitted him of armed robbery with use of force. The trial court imposed three consecutive sentences that require him to serve a total of fifteen years of initial confinement and eight and one-half years of extended supervision.

² The no-merit report and supplemental no-merit report were filed by Attorney Jay R. Pucek. On March 31, 2023, Attorney Douglas C. McIntosh substituted as counsel for Ward and now represents Ward in this appeal.

³ Some of Ward's responses were titled as motions for mandamus and docketed as part of this appeal. Ward also filed a petition for writ of mandamus that was docketed separately as No. 2021AP2225-W. That petition was dismissed on March 22, 2022, when Ward did not pay the filing fee or file a petition for waiver of the filing fee.

This decision will not restate every assertion Ward makes in his responses. This court has reviewed the responses and concludes that Ward has not identified any issues of arguable merit.

The lengthy no-merit report addressed three primary issues: (1) whether there was sufficient evidence to support the jury's verdict for each crime; (2) whether there were issues before or during trial that require reversal; and (3) whether the trial court erroneously exercised its sentencing discretion. The no-merit report thoroughly discussed those issues and included references to relevant statutes, case law, transcripts, and other court documents.

In his numerous responses to the no-merit report, Ward raised several issues. First, he asked appellate counsel to provide him with specific documents, including some from outside the record. We directed appellate counsel to explain in a supplemental no-merit report what information had been provided. The supplemental no-merit report stated that counsel had provided Ward with all of the documents in counsel's possession and that counsel attempted to obtain additional materials that Ward claims exist, even though WIS. STAT. § 809.32(1) does not require counsel to provide materials other than the trial court case record and transcripts. Having reviewed counsel's explanation of the steps taken to provide Ward with additional materials, this court is satisfied that counsel has more than met his obligations. In addition, although Ward, in his response to the supplemental no-merit report, continues to assert there are additional reports and recordings of interviews that he wants to review, this court is not persuaded that Ward has identified materials that exist and are necessary for this court to evaluate his conviction. Ward has not raised an issue of arguable merit with respect to materials that are not part of the appellate record.

The second issue that Ward raised in his responses was ineffective assistance of trial counsel. Ward asserted that trial counsel should have performed a better investigation, objected to certain evidence, impeached witnesses, and challenged the search warrant. Recognizing that the no-merit report had adequately addressed many of those issues, we concluded that only one

of Ward's assertions warranted a response from appellate counsel. Specifically, we directed appellate counsel to address in a supplemental no-merit report whether there was a legal basis to file a suppression motion and whether trial counsel should have filed such a motion. The supplemental no-merit report provided a detailed explanation for why there was no basis to challenge the search warrant and its execution, and the report concluded there would be no merit to alleging that trial counsel should have filed a suppression motion. We agree with the thorough analysis in the supplemental no-merit report concerning this issue. There would be no arguable merit to challenging the search warrant or trial counsel's performance on that issue.

We also directed appellate counsel to address in a supplemental no-merit report references to criminal gangs that were introduced at trial, including whether the trial court should have sustained one of trial counsel's objections and whether trial counsel's performance was ineffective with respect to trial evidence concerning criminal gangs. Once again, this court agrees with the thorough analysis provided in the supplemental no-merit report. There would be no arguable merit to an appeal of the trial court's admission of the evidence or a challenge to trial counsel's performance with respect to trial evidence concerning criminal gangs.

Having reviewed the record and the many appellate filings in this case, this court agrees with appellate counsel that there would be no arguable merit to challenging the sufficiency of the evidence, the sentence, the pretrial and trial proceedings, or trial counsel's performance. Further, Ward's responses have not identified an issue of arguable merit.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report and supplemental no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Ward further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Douglas C. McIntosh is relieved from further representing Latham S. Ward in this appeal. *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