



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT I**

June 20, 2023

To:

Hon. Jeffrey A. Wagner  
Circuit Court Judge  
Electronic Notice

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

Winn S. Collins  
Electronic Notice

Jeffrey W. Jensen  
Electronic Notice

Willie Earl Davis Jr. 388712  
Waupun Correctional Institution  
P.O. Box 351  
Waupun, WI 53963-0351

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

---

2021AP235-CRNM      State of Wisconsin v. Willie Earl Davis, Jr. (L.C. # 2018CF4593)

Before Brash, C.J., Donald, P.J., and White, J.

**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).**

Willie Earl Davis, Jr., appeals a judgment, entered upon a jury's verdicts, convicting him of first-degree reckless homicide with use of a dangerous weapon as a party to a crime and possessing a firearm as a felon. His appellate counsel, Jeffrey W. Jensen, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22) and *Anders v. California*, 386 U.S. 738 (1967).<sup>1</sup> Davis received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record

---

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

as mandated by *Anders*, we summarily affirm the judgment because there is no arguable merit to any issue that could be pursued on appeal. *See* WIS. STAT. RULE 809.21.

According to the complaint, on September 12, 2018, police found the victim in this matter in the backyard of a residence. The victim had multiple gunshot wounds and was pronounced dead at the scene. L.N. told police that she saw Davis and the victim have a verbal exchange, she momentarily looked away, and then heard gunshots. When she looked back, L.N. saw Davis “with his right arm extended shooting westward.” L.N. did not see where the victim ran off to, and when she asked Davis what he had done, he took off running. Two other witnesses additionally identified Davis as the shooter. The complaint further alleged that Davis was a convicted felon.

The case proceeded to trial and a jury found Davis guilty of first-degree reckless homicide and possessing a firearm as a felon. The trial court ordered Davis to serve sentences totaling thirty years of initial confinement and ten years of extended supervision.

The no-merit report addresses six potential issues: (1) whether the trial court’s colloquy with Davis concerning his stipulation to his prior felony conviction was appropriate; (2) the sufficiency of the evidence to support the convictions; (3) whether Davis validly waived his right to testify; (4) the propriety of the prosecutor’s closing argument; (5) whether the jury was properly instructed; and (6) whether the circuit court properly exercised its discretion when it sentenced Davis. This court is satisfied that the no-merit report properly analyzes the issues it raises as being without merit. Additionally, this court has concluded that no procedural errors occurred prior to trial.

We will, however, briefly elaborate on Davis’s stipulation that he had a prior felony conviction. During the trial, the court read the stipulation to the jury: “The parties to this action ... agree and stipulate that on September 12, 2018, that the defendant, Mr. Davis, was prohibited from possessing a firearm, having been convicted of a felony prior to September 12, 2018.” Prior to reading the stipulation, and outside the presence of the jury, the circuit court’s waiver inquiry with Davis went as follows:

THE COURT: So there is a stipulation as to the felon in possession. Sir, you signed this document; is that correct?

THE DEFENDANT: Yes.

THE COURT: And you agree with it? That on September 12, 2018, that you were prohibited from possessing a firearm and having been convicted of a felony prior to the September 12 date?

THE DEFENDANT: Yes.

THE COURT: And you agree with that and you signed it?

THE DEFENDANT: Yes.

THE COURT: You discussed that with your lawyer?

THE DEFENDANT: Yes.

THE COURT: That was a voluntary decision on your part; is that right?

THE DEFENDANT: Yes.

THE COURT: And counsel, you believe it was?

[DEFENSE COUNSEL]: Yes.

THE COURT: All right. Then the Court will give this when the jury comes back.

The no-merit report acknowledges that the trial court did not inform Davis that he had a right to a jury trial concerning this element. *See State v. Livingston*, 159 Wis. 2d 561, 569, 464 N.W.2d 839 (1991) (requiring the defendant personally to waive the right to a jury trial).

In its closing instructions, the trial court did, however, instruct the jury as to every element of the offense, stating:

To this charge [of possessing a firearm as a felon] the defendant has also entered a plea of not guilty, which means the state must prove every element of the offense charged beyond a reasonable doubt. The criminal code is violated by the person who possesses a firearm, if that person has been convicted of a felony. Before you may find the defendant guilty of this offense, the state must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were presents [sic]. That the defendant possessed a firearm. Firearm means a weapon which acts by the force of gunpowder. Possess means the defendant had actual physical control of a firearm. Two, the defendant had been convicted of a felony before September 12, 2018.

The parties have stipulated or agreed the defendant was convicted of a felony before September 12, 2018 and you must accept this as conclusively proven. If you are satisfied beyond a reasonable doubt that both elements of this offense have been proved, you should find the defendant guilty. If you are not so satisfied, you must find the defendant not guilty.”

The no-merit report cites *State v. Benoit*, 229 Wis. 2d 630, 600 N.W.2d 193 (Ct. App. 1999), where we concluded that when a defendant stipulates to an element of an offense and the jury is also instructed as to all of the elements with the trial court playing no role as fact finder, the defendant has received a jury trial on all elements and an express personal waiver is not required. *See id.* at 638. The rule’s reach includes circumstances where, as here, the jury is told that one of the elements on which it has been instructed is considered proven based on the stipulation. *See id.* There would be no arguable merit to further pursuit of this issue.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Davis 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 Jeffrey W. Jensen is relieved of further representation of Willie Earl Davis, Jr., in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

---

*Samuel A. Christensen*  
*Clerk of Court of Appeals*