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**DISTRICT II**

July 5, 2023

To:

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John T. Wasielewski  
Electronic Notice

Shannon R. Nichols  
1021 Greenbush St.  
Waukesha, WI 53188

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

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2020AP1016-CRNM      State of Wisconsin v. Shannon R. Nichols (L.C. #2018CF1237)

Before Gundrum, P.J., Grogan 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).**

Attorney John T. Wasielewski, appointed counsel for Shannon R. Nichols, has filed a no-merit report. *See* WIS. STAT. RULE 809.32 (2021-22)<sup>1</sup> and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to the sufficiency of the evidence to support the jury verdicts, a claim of ineffective assistance of counsel, or a challenge to the sentence imposed by the circuit court. Nichols was

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

provided a copy of the report but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

In August 2018, Nichols was charged with burglary, violating a harassment injunction, and two counts of bail jumping. The criminal complaint alleged that police responded to a report of a burglary, and found Nichols inside the victim's apartment. The victim had an active harassment injunction against Nichols that prohibited Nichols from being within 100 feet of the victim's property, and Nichols was on bond for criminal offenses in two cases. Police discovered items belonging to the victim (in bags that did not belong to the victim) inside the victim's apartment, and also found items belonging to the victim in Nichols's car.

The case was tried to a jury. The victim testified that Nichols was her fiancée's ex-girlfriend, and that the victim had not given Nichols permission to enter her apartment or take her property. The victim testified that she had been house-sitting for several weeks, and that both she and her fiancée, who also resided at the apartment, had been in and out of the apartment during that time. The victim stated that she called the police because she was concerned someone had entered her apartment.

Nichols stipulated that she had been served with a restraining order prohibiting her from being within 100 feet of the victim or her property, and that she had been charged in two criminal cases and signed bonds agreeing not to commit any crimes. Nichols testified, however, that her ex-boyfriend had rented the apartment to her and that she believed that the victim had moved out of the apartment.

The jury found Nichols guilty of all charges. The court sentenced Nichols to eighteen months of initial confinement and three years of extended supervision.

The no-merit report addresses whether the evidence was sufficient to support the jury verdicts. A claim of insufficiency of the evidence requires a showing that “the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). We agree with counsel’s assessment that there would be no arguable merit to an argument that that standard has been met here. The evidence at trial—including testimony by the investigating officers and the victim, as well as Nichols’s stipulations—was sufficient to support the verdicts.

The no-merit report also addresses whether there would be arguable merit to a claim of ineffective assistance of counsel based on trial counsel’s failure to call Nichols’s ex-boyfriend to testify in her defense. Counsel concludes that this issue would lack arguable merit based on trial counsel’s explanation at sentencing that she spoke with the ex-boyfriend before trial and determined that he would be a “wild card” on the stand. We agree with counsel that, because trial counsel explained her strategic decision not to call the ex-boyfriend to testify, a claim of ineffective assistance of counsel on this basis would lack arguable merit.

The no-merit report also addresses whether there would be arguable merit to a challenge to the sentence imposed by the circuit court. We conclude that this issue lacks arguable merit. This court’s review of a sentence determination begins “with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of.” *State v. Krueger*, 119 Wis. 2d 327, 336,

351 N.W.2d 738 (Ct. App. 1984). Here, the court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the gravity of the offenses, Nichols's rehabilitative needs, and the need to protect the public. See *State v. Gallion*, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was well within the maximum allowed by law and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. See *State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive “only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances” (citation omitted)). We discern no arguable merit to a challenge to the circuit court's sentencing decision.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the judgment of conviction is affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney John T. Wasielewski is relieved of any further representation of Shannon R. Nichols 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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*Samuel A. Christensen*  
*Clerk of Court of Appeals*