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DISTRICT I

November 28, 2023

To:

Hon. Mark A. Sanders
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
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Winn S. Collins
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Armani C. Wells 599718
Columbia Corr. Inst.
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You are hereby notified that the Court has entered the following opinion and order:

2022AP1966-CRNM State of Wisconsin v. Armani C. Wells (L.C. # 2021CF281)

Before White, C.J., Donald, P.J., and Geenen, 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).

Armani C. Wells appeals a judgment, entered upon a jury's verdicts, convicting him of robbery with the use of force. His appellate counsel, Jaymes Fenton, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).¹ Wells received a copy of the report and was advised of his right to file a response, but he did not do so. Upon this court's independent review of the record as mandated by *Anders* and counsel's

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

report, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm.

The charge against Wells stemmed from an incident that occurred in January 2021. The victim, J.S., reported to police that he was sitting in his vehicle in his employer's parking lot on West Fond du Lac Avenue in Milwaukee during his break when a man wearing a black jacket approached his car. The man ordered J.S. to get out of the car; he then opened the door, pulled J.S. out, and punched J.S. repeatedly in the face and head with a closed fist. The man then got into J.S.'s vehicle and drove away.

The police used J.S.'s phone, which was still in the car, to locate the stolen vehicle. A patrol officer observed the car traveling at a high rate of speed. The vehicle crashed, and the driver fled. Police found the driver nearby, and he matched the robbery suspect's description provided by J.S. The suspect—Wells—was taken into custody. J.S. was presented with a photo array, from which he identified Wells as the man who robbed him.

The matter proceeded to trial in June 2021. J.S. testified regarding the incident, adding that when he identified Wells in the photo array he was “so sure it was him.” J.S. stated that even though the entire incident lasted “less than a minute,” he took in “all the details of [Wells'] face” while he was being assaulted, to make sure he could “make an identification if given the opportunity.”

Several police officers also testified for the State, including the police officer who responded to the robbery call and tracked J.S.'s phone, and the patrol officer who responded to the location where the vehicle had been tracked. That officer explained that he observed a car matching the description of J.S.'s vehicle traveling at a high rate of speed in the area where J.S.'s

cell phone was “pinging,” and then crash. The officer saw the driver exit the car and run between some houses.

The officer stated that the suspect was wearing a black jacket when he exited the vehicle. The officer explained that he pulled into the adjacent alley to attempt to cut off the suspect. He saw a man come out from between the houses, wearing a gray hoodie instead of a jacket. The officer testified that the man otherwise looked like the driver he had seen flee from the vehicle, and that there were no other people in the area at that time. The officer’s partner searched the flight path between J.S.’s vehicle and where Wells was taken into custody, and discovered a black jacket.

Another officer who assisted in the search testified that he discovered J.S.’s phone on top of a garage roof along the flight path. That officer also observed footprints in the snow, spaced as if the person had been running, from J.S.’s vehicle to the alley where Wells was apprehended.

The officer who showed the photo array to J.S. also testified. That officer conceded that there were no fingerprints or DNA evidence recovered in J.S.’s vehicle to link Wells to the car.

After a thorough colloquy with the trial court, Wells decided not to testify. The defense called no witnesses.

The jury found Wells guilty of robbery with the use of force, as charged. Documentation of Wells’ prior convictions was submitted and found by the trial court to be sufficient to meet the requirements for a habitual criminality enhancer. The court sentenced Wells to five years of initial confinement, to be followed by five years of extended supervision. The court also imposed restitution in the amount of \$7,891.89 for J.S.’s out-of-pocket medical expenses, and to

reimburse his auto insurance company for his vehicle, which was deemed a total loss. This no-merit appeal follows.

The no-merit report first addresses whether there is sufficient evidence to support the jury's guilty verdict. A jury's verdict will not be disturbed "unless the evidence, viewed most favorably to the [S]tate 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).

As explained by the trial court to the jury, the elements the State had to prove for robbery by the use of force were that Wells, with the intent to steal, took property from J.S. by using force with the intent to overcome physical resistance to the taking of J.S.'s property. *See* WIS JI—CRIMINAL 1479. The trial court noted that this was a "credibility case," since there was no physical evidence recovered from the vehicle to link Wells to the crime. Rather, the jurors had to determine whether the testimony of J.S. and the police officers was credible. "It is the jury's job to resolve any conflicts or inconsistencies in the evidence and to judge the credibility of the evidence[.]" *State v. Perkins*, 2004 WI App 213, ¶15, 277 Wis. 2d 243, 689 N.W.2d 684.

Based on the guilty verdict, the jury clearly found the testimony by the State's witnesses credible. That finding is supported by the record. We therefore agree with appellate counsel's assessment that there would be no arguable merit to a claim that the evidence was insufficient to support the verdict.

The other issue addressed by appellate counsel in the no-merit report is whether there would be any merit to a challenge of the trial court's discretion in imposing Wells' sentence. The record reflects that the 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. In particular, the court weighed the fairly aggravated nature of the offense against Wells’ history of mental health issues and difficult life experiences.

Furthermore, the ten-year sentence imposed by the trial court is well within the statutory maximum of fifteen years for this offense plus an additional six years for the habitual criminality enhancement. *See* WIS. STAT. §§ 943.32(1)(a); 939.62(1)(c); 939.50(3)(e). As such, the sentence cannot be deemed to be unduly harsh or unconscionable. *See State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449.

Additionally, the restitution statute provides for awarding amounts for property damage and for medical expenses in cases where the victim suffered bodily injury. WIS. STAT. § 973.20(2)(am) and (3)(a). The record reflects that sufficient documentation was submitted to support the restitution award that was imposed. Therefore, we agree with appellate counsel’s conclusion that there would be no arguable merit to a challenge of Wells’ sentence.

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 Wells further in this appeal.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Jaymes Fenton is relieved of further representation of Armani C. Wells 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