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**DISTRICT I**

June 2, 2026

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Santonio S. Barksdale Jr. 687264  
Columbia Correctional Institution  
P.O. Box 900  
Portage, WI 53901-0900

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

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2023AP668-CRNM      State of Wisconsin v. Santonio S. Barksdale, Jr.  
(L.C. # 2019CF947)

Before Donald, C.J., Colón, 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).**

Santonio S. Barksdale, Jr., appeals from a judgment, entered upon a jury's verdict, convicting him on one count of armed robbery and one count of first-degree recklessly endangering safety. Appellate counsel has filed a no-merit report.<sup>1</sup> *See Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2023-24).<sup>2</sup> Barksdale filed a response, plus

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<sup>1</sup> The no-merit report was filed by Attorney Kathleen A. Lindgren, who has been replaced by Attorney Dustin C. Haskell as Barksdale's appellate counsel.

<sup>2</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

an additional document that this court accepted as a supplemental response. Appellate counsel filed a supplemental report. Upon this court's independent review of the record as mandated by *Anders*, counsel's reports, and Barksdale's responses, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

## **BACKGROUND**

On March 1, 2019, Barksdale entered a store armed with a handgun and demanded money. The cashier initially thought Barksdale was joking, but then Barksdale shot him in the right leg. After the cashier handed over money from the register, Barksdale asked whether there was a safe. When the cashier replied that there was not, Barksdale shot him in the left leg and fled the store. The cashier later identified Barksdale from a photo array. Barksdale was charged with armed robbery and first-degree recklessly endangering safety.

At trial, the State introduced video and still images from the store's surveillance system. There was video from the robbery and images showing Barksdale in the store the day before the robbery in similar clothes. The cashier and the store owner—who had been present at the store during the robbery but was initially in the restroom—both testified as to how they identified Barksdale as the perpetrator; both knew Barksdale as a regular patron, and the cashier identified a distinctive facial tattoo. While the jury was given a lesser-included instruction for second-degree recklessly endangering safety, the jury convicted Barksdale of the two offenses as charged. The trial court later imposed concurrent sentences totaling 15 years of initial confinement and 5 years of extended supervision.

## DISCUSSION

### *I. Sufficiency of the Evidence*

The no-merit report first addresses whether there was sufficient credible evidence to support the guilty verdicts. We view the evidence in the light most favorable to the verdict and, if more than one reasonable inference can be drawn from the evidence, we must accept the one drawn by the jury. *See State v. Poellinger*, 153 Wis. 2d 493, 504, 451 N.W.2d 752 (1990). “The jury verdict will be overturned only if, viewing the evidence most favorably to the State and the conviction, it is inherently or patently incredible, or so lacking in probative value that no jury could have found guilt beyond a reasonable doubt.” *State v. Alles*, 106 Wis. 2d 368, 376-77, 316 N.W.2d 378 (1982) (citation modified).

The no-merit report sets forth the applicable standard of review, identifies the elements of each crime, and extensively details the evidence satisfying those elements. We are satisfied that the no-merit report properly analyzes any issue regarding sufficiency of the evidence as lacking arguable merit.

### *II. Sentencing Discretion*

The no-merit report next discusses whether the trial court properly exercised its sentencing discretion. *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. Our review of the record confirms that the trial court appropriately considered relevant sentencing objectives and factors, including mitigating factors. The concurrent sentences totaling 20 years’ imprisonment are well within the approximately 56-year range authorized by law, *see State v.*

*Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and are 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). The trial court also made Barksdale eligible for the earned release and challenge incarceration programs after serving six years of initial confinement. We are satisfied that the no-merit report properly analyzes any challenges to the circuit court’s sentencing discretion as without arguable merit.

### *III. Ineffective Assistance of Trial Counsel*

The no-merit report addresses several issues Barksdale had raised prior to counsel filing the no-merit report. The first of these is whether there are any arguably meritorious claims that trial counsel was ineffective. “There are two elements that underlie every claim of ineffective assistance of counsel,” deficient performance by counsel and prejudice from that deficiency. *State v. Mayo*, 2007 WI 78, ¶60, 301 Wis. 2d 642, 734 N.W.2d 115. We need not address both elements if the defendant cannot make a sufficient showing as to one or the other. *Id.*, ¶61.

#### **A. Objections to Testimony**

The first of three potential ineffective assistance claims explored in the no-merit report is whether trial counsel was ineffective “for failing to object to wrongful testimony presented from witnesses for the State and not challenged by defense counsel.” Specifically, the report discusses whether Barksdale “could argue that during his trial [the cashier] testified about the height of the individual who shot him, and that information regarding the suspect’s height [does] not match his own true height.” According to Barksdale, the suspect was five feet and five inches tall, while he is five feet and eleven inches tall.

Conceivably, the five-foot-five description was given initially and is recorded somewhere in a police report, but neither the cashier nor the store owner testified at trial about the specific height of the shooter, so there was nothing to which an objection could be raised. Even if the witnesses had testified about the shooter's height, discrepancies between witness perceptions and reality go only to the weight of the evidence, not its admissibility. Thus, any objection to the admission evidence on the shooter's height would have been overruled, *see State v. Tutlewski*, 231 Wis. 2d 379, 384, 605 N.W.2d 561 (Ct. App. 1999), and attorneys are not ineffective for failing to make a meritless objection, *see State v. Sanders*, 2018 WI 51, ¶129, 381 Wis. 2d 522, 912 N.W.2d 16.

### **B. The Photo Arrays**

The second potential ineffective assistance claim is whether trial counsel was ineffective for failing to seek suppression of the two victims' out-of-court identification of Barksdale through the photo arrays. Neither Barksdale nor appellate counsel identify a specific ground for such a suppression motion, but it appears likely that he is referring to a claim that the arrays were impermissibly suggestive because he was the only individual in the arrays with a cross tattoo on his face.

In determining whether an out-of-court identification from a photo array should be suppressed, the defendant first has the burden to show the array was impermissibly suggestive. *State v. Drew*, 2007 WI App 213, ¶13, 305 Wis. 2d 641, 740 N.W.2d 404. An impermissibly suggestive procedure is one that makes it "all but inevitable" that the defendant would be identified. *Foster v. California*, 394 U.S. 440, 443 (1969). Suggestiveness can arise in several ways, such as the manner in which the photos are presented, actions of the officer overseeing the

process, or something in the photos themselves. *State v. Mosley*, 102 Wis. 2d 636, 652, 307 N.W.2d 200 (1981).

However, our supreme court in *Mosley* “decline[d] to assume that a unique identifying feature *ipso facto* is unduly suggestive, without more persuasive proof by the defendant[.]” *Id.* at 654. While the photos in an array must be similar, they need not be identical. *Powell v. State*, 86 Wis. 2d 51, 67, 271 N.W.2d 610 (1978). Although Barksdale was the only individual with a cross tattoo, all six of the pictured individuals had facial tattoos of one type or another. There is no support in the record for a claim that the arrays were unduly suggestive, so any motion to suppress would have been denied. Because counsel is not ineffective for failing to pursue a meritless motion, *Sanders*, 381 Wis. 2d 522, ¶29, there is no arguable merit to an ineffective assistance claim here.

### C. Failure to Request a Competency Evaluation

The no-merit report also addresses Barksdale’s concern that trial counsel was ineffective for failing to challenge his competency during the case. WISCONSIN STAT. § 971.13(1) prohibits the trial of incompetent defendants. To be competent, a defendant must: (1) “possess[] sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding”; and (2) possess “a rational as well as factual understanding of a proceeding against him or her.” *State v. Garfoot*, 207 Wis. 2d 214, 222, 558 N.W.2d 626 (1997). “[I]t is an attorney’s duty to the court to raise the issue of competency, if he or she believes there is a reason to doubt” the defendant’s competency. *State v. Meeks*, 2003 WI 104, ¶44, 263 Wis. 2d 794, 666 N.W.2d 859.

The no-merit report indicates that there is insufficient evidence “to establish that trial counsel was deficient for not challenging Barksdale’s competency during trial court proceedings.” We agree. About a year before the robbery, Barksdale had been shot multiple times, and did experience a personality change as a result. However, a psychiatric illness or other medical condition “does not necessarily render the defendant incompetent to stand trial.”<sup>3</sup> *State v. Byrge*, 2000 WI 101, ¶31, 237 Wis. 2d 197, 614 N.W.2d 477. “To determine legal competency, the court considers a defendant’s present mental capacity to understand and assist at the time of the proceedings.” *Id.* Nothing in this record supports a claim that Barksdale was incapable of understanding and assisting at the time of the proceedings. Because, again, counsel is not ineffective for failing to file a meritless motion, there is no arguably meritorious claim that trial counsel was ineffective for failing to request a competency evaluation.

#### IV. Barksdale’s Issues

In his responses to the no-merit report, Barksdale identified three primary areas of concern: “failures to [be] evaluated” for competency; “newly discovered and exculpatory evidence”; and a speedy trial violation. We have already concluded there is no arguably meritorious issue relating to Barksdale’s competency, so we will not discuss that issue further.

Regarding his claim of newly discovered and exculpatory evidence, Barksdale appears to be referring to security footage from a Wal-Mart, where Barksdale had claimed to be during the time of the robbery. This video was not introduced at trial. However, one of the detectives

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<sup>3</sup> Likewise, there is no support in the record for a plea of not guilty by reason of mental disease or defect, which requires the defendant to show that he lacked substantial capacity either to appreciate the wrongfulness of his conduct or conform his conduct to the requirements of the law. *See* WIS. STAT. § 971.15(1).

testified that he had viewed the video, which showed only an entrance, and that the camera was at such an angle that it was looking down at customers and unable to provide a clear view of faces. Accordingly, this video would not qualify as newly discovered evidence because it existed prior to trial. Additionally, based on the information that is in the record, the footage is also not exculpatory. There is no arguably meritorious basis, on this record, to argue that this footage should have been shown or that trial counsel was ineffective for using it at trial.

We do, however, note that Barksdale correctly identifies a speedy trial violation.

Under WIS. STAT. § 971.10(2)(a), the trial of a felony defendant must “commence within 90 days from the date trial is demanded by any party in writing or on the record.” Barksdale entered a speedy trial demand on May 24, 2019. Based on that demand, the circuit court set a final pretrial conference for July 1, 2019, and trial for August 5, 2019. At the July 1 conference, Barksdale’s attorney noted he was leaving his job at the public defender’s office and could not continue the case. The matter was reset for a final pretrial conference on August 6, 2019, with trial starting on August 19, 2019. This initial reset date was still within the statutory 90 days.

At the August 6 hearing, new counsel appeared and expressed concern that he could not be ready for an August 19 trial, but that Barksdale still wanted his speedy trial. Barksdale informed the court that he was “okay with waiting” but if it was anything past the deadline, he wondered “would it be all right for [him] to have a PR bond?” The trial court, now with a new judge, acknowledged the request, and that counsel’s withdrawal was not precipitated by Barksdale. However, it wanted to take a look at the case history first, and said it would make a decision on August 19. On August 19, the circuit court continued the trial, resetting it for October. It also denied Barksdale’s request for bond, explaining that it is permitted to grant a

continuance of the speedy trial period and that “it [did] not serve the ends of justice to release [him] on a personal recognizance bond.” The trial began on October 21, 2019.

While the trial court may grant a continuance in the face of a speedy trial demand, *see* WIS. STAT. § 971.10(3)(a), it was error for the circuit court to deny a personal recognizance bond.<sup>4</sup> Under § 971.10(4), “[e]very defendant not tried in accordance with this section shall be discharged from custody but the obligations of the bond or other conditions of release of a defendant shall continue until modified or until the bond is released or the conditions removed.” That is, if the defendant is not tried within 90 days, the circuit court can continue the trial date rather than dismiss the case, but the defendant must be released from custody.

However, the exclusive remedy for a statutory speedy trial violation is the defendant’s pretrial release on bond. *See* WIS. STAT. § 971.10(4). Thus, any claim of a statutory speedy trial violation is now moot and, though Barksdale did not have an opportunity for pretrial release, he instead received sentence credit for the time spent in pretrial custody. Thus, the record does not support an arguably meritorious claim of a statutory speedy trial violation.<sup>5</sup>

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

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<sup>4</sup> The only consideration of public interest is whether “the ends of justice served by the granting of the continuance outweigh the best interests of the public and the defendant in a speedy trial.” WIS. STAT. § 971.10(3)(a). That is, public interest has no bearing on a defendant’s entitlement to release on bond under this section when the statutory deadline will not be met.

<sup>5</sup> Additionally, the five-month delay is insufficient to trigger a constitutional speedy trial concern. *See State v. Borhegyi*, 222 Wis. 2d 506, 509-10, 588 N.W.2d 89 (Ct. App. 1998), *overruled in part on other grounds by State v. Ramirez*, 2025 WI 28, ¶43, 416 Wis. 2d 641, 22 N.W.3d 821.

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

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved of further representation of Barksdale 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*