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DISTRICT I

September 1, 2026

To:

Hon. David A. Feiss
Reserve Judge

Brian Patrick Mullins
Electronic Notice

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

Malik Darion Roberson 713525
Stanley Correctional Institution
100 Corrections Dr.
Stanley, WI 54768

John Blimling
Electronic Notice

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

2024AP6-CRNM	State of Wisconsin v. Malik Darion Roberson (L.C. # 2021CF2364)
2024AP7-CRNM	State of Wisconsin v. Malik Darion Roberson (L.C. # 2021CF5046)

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).

Malik Darion Roberson appeals from judgments of conviction entered upon his guilty pleas. Appellate counsel, Brian Patrick Mullins, has filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2023-24).¹ Roberson filed a short letter that we construed as a response to the no-merit report. Upon this court's independent review of the record as mandated by *Anders*, counsel's report, and Roberson's

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

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

On June 9, 2021, Daniel, Sydney,² and their two-month-old child drove to Roberson's home to pick up the one-year-old child whom Sydney and Roberson shared. When Daniel and Sydney arrived, Sydney informed Roberson that they were waiting outside. Roberson came out, armed with a pistol, and pointed the gun at the car. Sydney began recording with her cell phone, screaming "My baby's in this car." Roberson fired two shots toward the car. One bullet lodged in the hood of the car, but the other went through the windshield and hit Daniel in the right shoulder. Roberson was arrested and charged on June 15, 2021, in Milwaukee County Circuit Court Case No. 2021CF2364, with one count of first-degree reckless injury and two counts of first-degree recklessly endangering safety, all with the dangerous weapon enhancer.

While Roberson was in jail for those pending charges, he made several outgoing calls to Sydney, trying to convince her to not show up to court and to call the district attorney's office and tell them she did not want to proceed. As a result, he was charged on December 9, 2021, in Milwaukee County Circuit Court Case No. 2021CF5046, with felony intimidation of a witness, felony intimidation of a victim, and six counts of misdemeanor bail jumping.³ The circuit court joined the cases on the State's motion.

² These matters involve crime victims. For ease of reading and pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use pseudonyms instead of the victims' names.

³ At the time, Roberson had no-contact orders prohibiting contact with Sydney in three other pending cases in Milwaukee.

Roberson waived a jury trial, and a court trial began. Daniel was called to testify first. The circuit court allowed a break during that testimony so that Roberson’s attorney could appear in a different courtroom. When the parties reconvened, Roberson wanted to resolve his case through a plea agreement. In exchange for his guilty pleas to the three counts as charged in case No. 2021CF2364 and to the intimidation of a witness charge in case No. 2021CF5046, the State agreed to dismiss and read in the remaining counts in the second case, as well as the charges in two pending misdemeanor cases.⁴ The State also agreed to limit its sentence recommendation to a global total of twenty years of initial confinement and ten years of extended supervision. The circuit court accepted the pleas and imposed concurrent and consecutive sentences totaling fifteen years of initial confinement and ten years of extended supervision.⁵

The first issue discussed in the no-merit report is whether Roberson’s pleas were knowing, intelligent, and voluntary. Our review of the record—including the plea questionnaire/waiver of rights forms and addenda, along with the relevant jury instructions included with the forms—confirms that the circuit court complied with its obligations for taking guilty pleas, pursuant to WIS. STAT. § 971.08, *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. We agree with counsel’s analysis and conclusion that any challenge to the validity of Roberson’s plea would lack arguable merit.

⁴ Two additional misdemeanor cases were dismissed when Sydney did not appear for trial.

⁵ The circuit court imposed eight years’ initial confinement and four years’ extended supervision for the reckless injury; four years’ initial confinement and four years’ extended supervision on each endangering safety count, concurrent to each other and consecutive to the injury sentence; and three years’ initial confinement and two years’ extended supervision for the intimidation, consecutive to the other sentences.

The no-merit report next addresses whether there is any arguably meritorious basis for challenging the circuit court’s sentencing discretion. See **State v. Gallion**, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. Our review of the record confirms that the court appropriately considered relevant sentencing objectives and factors. See *id.*, ¶41; see also **State v. Odom**, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695; **State v. Ziegler**, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The thirteen-year sentence imposed is well within the thirty-one-year range authorized by law, see **State v. Scaccio**, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is 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). There is no arguable merit to challenging the court’s sentencing discretion.

In his response, Roberson suggests he has grounds for seeking sentence modification. He says that the circuit court made him eligible for the challenge incarceration and substance abuse programs after twelve years and that his lawyer “guaranteed” the programs, but the Department of Corrections (DOC) has “denied [him] for” the programs. Roberson further asserts that if the circuit court knew the DOC would deny his participation, the court would have imposed sentences totaling twelve years of initial confinement.

As part of its exercise of sentencing discretion, the circuit court must declare the offender eligible to participate in either program, both of which can result in early release from initial confinement. See WIS. STAT. § 973.01(3g), (3m); see also WIS. STAT. §§ 302.045(3m)(b), 302.05(3)(c). While the statutes list criteria necessary to determine who *can* participate in the programs, the circuit court determines whether an offender *should* be eligible to participate in either program. See **State v. Johnson**, 2007 WI App 41, ¶14, 299 Wis. 2d 785, 730 N.W.2d 661.

In case No. 2021CF2364, the circuit court noted that count one, the reckless injury, is a violation of WIS. STAT. ch. 940, which means Roberson is statutorily excluded from program eligibility. See WIS. STAT. §§ 302.045(2)(c), 302.05(3)(a)1. The circuit court further declined to make him eligible for programming on counts two and three “based upon the seriousness of the offenses[.]” The court did, however, make Roberson “eligible for the Challenge Incarceration Program and the Substance Abuse Program on 21CF5046.”⁶

The circuit court’s declaration of eligibility for the second case was erroneous as a matter of law; felony intimidation of a witness is also a WIS. STAT. ch. 940 violation, meaning Roberson is statutorily ineligible for either program. However, we are unpersuaded that there is any arguable merit to a sentencing challenge based on Roberson’s statutory ineligibility for the challenge incarceration and substance abuse programs.

First, there is no indication that the circuit court’s sentencing decision was premised in any way on an expectation that Roberson would participate in the programming. Second, the DOC itself, not the circuit court, controls whether and when an inmate is placed in either program. See *State v. Schladweiler*, 2009 WI App 177, ¶10, 322 Wis. 2d 642, 777 N.W.2d 114, *abrogated on other grounds by State v. Harbor*, 2011 WI 28, 333 Wis. 2d 53, 797 N.W.2d 828. Thus, even individuals who are both statutorily eligible and made eligible by the sentencing court are not guaranteed participation in either program. Finally, a declaration of ineligibility by

⁶ The court did not specifically make Roberson eligible after serving twelve years as Roberson suggests in his response, although that would have been the practical effect of the court’s sentencing structure but for Roberson’s statutory ineligibility.

the DOC generally does not constitute a new factor warranting sentence modification. *See Schladweiler*, 322 Wis. 2d 642, ¶15.

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

Upon the foregoing, therefore,

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Brian Patrick Mullins is relieved of further representation of Roberson 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