



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

DISTRICT II

September 23, 2026

To:

Hon. Sandy A. Williams
Circuit Court Judge
Electronic Notice

John Blimling
Electronic Notice

Connie Mueller
Clerk of Circuit Court
Ozaukee County Justice Center
Electronic Notice

Jennifer Lohr
Electronic Notice

Kiheem A. Harden
501 North Dekora Woods Boulevard
Saukville, WI 53080

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

2026AP613-CRNM State of Wisconsin v. Kiheem A. Harden (L.C. #2023CF32)

Before Gundrum, Grogan, and LoCoco, 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).

Kiheem A. Harden appeals a judgment of conviction, entered on his no-contest plea, for burglary of a building as party to a crime. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24)¹ and *Anders v. California*, 386 U.S. 738 (1967). Harden was advised of his right to file a response and has not responded. After reviewing the Record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. See WIS. STAT. RULE 809.21.

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

On December 28, 2022, at approximately 4:50 a.m., surveillance video from a gas station in Mequon depicted two masked men—one wearing a gray hooded sweatshirt, and one wearing a green hooded sweatshirt, break the business’s front glass door with a sledgehammer. The men entered the store, removed cartons of Newport cigarettes and scratch-off lottery tickets, and fled in a dark-colored SUV.

Approximately nine minutes later, and one mile from the gas station, a Mequon patrol officer attempted to stop a dark-colored SUV with a burned-out front headlight. The vehicle fled, entering and driving the wrong way on the interstate. Police later found the vehicle abandoned on the side of the road with a flat tire. Located inside the vehicle were a sledgehammer, a pack of Newport cigarettes, and scratch-off lottery tickets. Blood was also located on the passenger-side door.

When a Mequon detective reached out to the Milwaukee Metro Investigators Group about the burglary, the New Berlin Police Department advised that, at 3:04 a.m. on the same morning as the burglary, a patrol officer had stopped a dark-colored SUV with a burned-out front headlight and both the driver and passenger had been identified during the traffic stop. Harden was identified as the passenger. Body camera video from the stop depicted Harden wearing a green hooded sweatshirt; the driver was wearing a gray hooded sweatshirt. Subsequent DNA testing indicated that “there was a strong indicator of inclusion of [Harden’s] DNA on ... the handle of the sledgehammer and of the dry blood on the door [to the SUV].” The State charged Harden with burglary of a building as party to a crime.

Pursuant to a plea agreement, Harden pled as charged. The State agreed to recommend a prison sentence of three years’ initial confinement and five years’ extended supervision. At

sentencing, Harden asked for an imposed and stayed prison sentence in favor of three years' probation. The circuit court sentenced Harden to thirty months' initial confinement and five years' extended supervision. This no-merit appeal follows.

The no-merit report addresses potential issues of whether Harden's plea was knowingly, voluntarily, and intelligently entered, whether the circuit court properly exercised its discretion at sentencing, and whether the court erred by denying Harden's multiple pro se motions to dismiss.

With regard to the circuit court's plea colloquy, we observe that the Record does not demonstrate the court determined that Harden understood the party to a crime liability to which he pled. Nevertheless, we conclude that the court's omission did not render the plea colloquy defective. When a person is alleged to have directly committed a crime and the elements of that crime are considered during the plea colloquy, it is "not necessary ... for the [circuit] court to additionally explain the concept of party to a crime liability." *State v. Brown*, 2012 WI App 139, ¶¶13-15, 345 Wis. 2d 333, 824 N.W.2d 916. In this case, Harden was alleged to have directly committed the crime of burglary of a building, and, as such, the court did not need to explain party to a crime liability to Harden during the plea colloquy. *See id.*

The remainder of the circuit court's plea colloquy sufficiently complied with the requirements of *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Harden was waiving, and other matters. The Record shows no other ground to withdraw the plea. We therefore agree with counsel's analysis and conclusion that any challenge to the validity of Harden's plea would lack arguable merit.

With regard to the circuit court's sentencing discretion, our review of the Record confirms that the court appropriately considered the relevant sentencing objectives and factors. See *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 resulting sentence was within the maximum authorized by law. See *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. The sentence was 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). Therefore, there would be no arguable merit to a challenge to the court's sentencing discretion.

Finally, the Record reflects that Harden filed multiple pro se motions to dismiss after his preliminary hearing was not held within ten days of his initial appearance. See WIS. STAT. § 970.03(2). We agree with appointed counsel that there is no merit to challenge the timing of his preliminary hearing on appeal. First, the Record reflects that at the initial appearance, Harden, by counsel, asked the circuit court to waive the preliminary hearing time limits for cause so that the State Public Defender ("SPD") could appoint an attorney for him. The court did so. Section 970.03(2) provides that the deadlines to hold a preliminary hearing may be extended by the circuit court "on motion and for cause[.]" Moreover, when the court later asked Harden whether he wanted to proceed to a preliminary hearing without an attorney, Harden stated, "No." The court then found "good cause to extend [the] time limits for the preliminary hearing in order for [Harden] to have [his] right to counsel in place." Because the preliminary hearing time limits were extended for cause so the SPD could appoint an attorney, there is no arguable merit to challenge the court's failure to hold a preliminary hearing within ten days of the initial appearance.

Our independent review of the Record discloses no other potential issues for appeal. This court accepts the no-merit report, affirms the judgment of conviction, and discharges appellate counsel of the obligation to represent Harden further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Jennifer Lohr is relieved from further representing Kiheem A. Harden in this appeal. *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