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July 21, 2020

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

2019AP1477-CRNM State of Wisconsin v. Charese A. Gardner (L.C. # 2015CF190)

Before Dugan, Donald and White, JJ.

Charese A. Gardner appeals from a judgment of conviction for one count of maintaining a drug trafficking place, as a party to a crime, contrary to WIS. STAT. §§ 961.42(1) and 939.05 (2015-16).¹ Gardner's appellate counsel, Katie Babe, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32. Gardner was served with a copy of the no-merit report and advised of her right to file a response. She has not filed a response. At this court's direction, appellate counsel filed a supplemental no-merit report

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

addressing one component of the trial court's suppression ruling. We have independently reviewed the record, the no-merit report, and the supplemental no-merit report, as mandated by *Anders*. We conclude that there is no issue of arguable merit that could be pursued on appeal. Therefore, we summarily affirm.

The charge against Gardner stemmed from a law enforcement investigation into a man Gardner was dating, Lonnie Davis, who sold drugs to a confidential informant. A detective secured a warrant to search an apartment where officers had observed Davis. The search warrant also allowed the officers to search "all storage areas and vehicles associated with and accessible to" the apartment. The warrant indicated that officers could search for a variety of items, such as heroin, scales, drug-related paraphernalia, money, documents identifying the user of the premises, and "[w]eapons and automobiles owned by or associated with the occupants." The officers planned to arrest Davis for drug trafficking when they executed the warrant.

While the police officers were conducting surveillance of the apartment building, Davis and Gardner arrived in the same vehicle. As Davis and Gardner entered the building, officers arrested Davis and detained Gardner. Both Davis and Gardner were handcuffed and taken into the apartment to sit on the couch while the search warrant was executed. While the officers were searching the apartment, the landlord of the apartment building told the police that Gardner was the approved tenant for the apartment.

When officers asked Gardner whether she had a vehicle outside the apartment building, Gardner indicated that she had a white Lexus, which the officers searched pursuant to the search warrant.² Officers recovered a gun, a taser, and a rental agreement for the apartment.

After finding drugs and learning that Gardner had rented the apartment, officers concluded that they had probable cause to arrest Gardner for maintaining a drug trafficking place, but they decided not to arrest her at the scene. Instead, she was allowed to leave. The next day, Davis called Gardner from the jail. In a series of phone calls, Gardner made incriminating statements indicating that she remotely erased cell phones seized by the police and suggesting that she was aware of drugs in the apartment. Gardner was arrested and charged with maintaining a drug trafficking place, as a party to a crime.

Gardner moved to suppress direct and derivative evidence obtained pursuant to the execution of the search warrant and statements Gardner made to the detectives during the execution of the search warrant.³ The trial court conducted an evidentiary hearing and ultimately denied the suppression motion.

The case proceeded to a jury trial. Gardner elected not to testify and the defense did not call any witnesses. The jury found Gardner guilty of maintaining a drug trafficking place, as a

² The record indicates that not only did Gardner identify the Lexus as her vehicle, the copy of a rider to the lease, which was found in a kitchen drawer in the apartment, identified the Lexus as the vehicle that would be parked in the apartment's assigned parking space.

³ Gardner told the detectives that she was not aware of any drug trafficking taking place at the apartment. She admitted that she rented the apartment, which was consistent with the lease agreement discovered during the execution of the search warrant. At the motion hearing, trial counsel asked the trial court to suppress "all the statements made by Ms. Gardner while at that residence," but he did not identify any specific evidence discovered as a result of those statements.

party to a crime. The trial court sentenced Gardner to eighteen months of initial confinement and one year of extended supervision, but it stayed the sentence and placed Gardner on probation for two-and-one-half years.⁴ Gardner was also ordered to serve six months in the House of Corrections as conditional jail time. This appeal follows.

The no-merit report discusses the pretrial proceedings, the jury trial, and sentencing. It addresses three primary issues, including: (1) whether there was sufficient evidence to support the jury's verdict; (2) whether the trial court erred when it denied Gardner's suppression motion; and (3) whether the trial court imposed an illegal sentence or otherwise erroneously exercised its sentencing discretion. The no-merit report thoroughly addresses each of those issues, providing citations to the record and relevant authority. For instance, appellate counsel identifies the elements of the offense and the trial evidence that supported each element.

This court is satisfied that the no-merit report properly analyzes the issues it raises. Based on our independent review of the record, we agree with counsel's assessment that there would be no arguable merit to pursuing any of those issues. We will not further discuss those issues, except we will briefly address the issue that we directed appellate counsel to analyze in a supplemental no-merit report.

We directed appellate counsel to provide additional analysis concerning the denial of the motion to suppress statements Gardner made to detectives at the apartment without being given *Miranda* warnings. See *Miranda v. Arizona*, 384 U.S. 436 (1966). Specifically, we asked

⁴ The no-merit report and online court records indicate that Gardner successfully completed probation and was actually discharged early.

appellate counsel to analyze whether Gardner was in custody for *Miranda* purposes and how the fact that she was handcuffed during some of the time she spoke with detectives affected the analysis.⁵

In her supplemental no-merit report, appellate counsel discusses the relevant case law and the trial court's analysis. Appellate counsel concludes that there would be no arguable merit to appealing the denial of the suppression motion. We accept appellate counsel's analysis and conclusion. Further, we conclude that there is another reason there would be no arguable merit to pursuing an appeal asserting that statements Gardner made to the detectives at the apartment should have been suppressed: the State did not introduce any of those statements at the trial. Instead, the only statements by Gardner that the State introduced were those she made during her telephone calls with Davis when he was in the jail. Thus, suppression of the statements Gardner made at the apartment would not provide a basis to seek a new trial.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report and supplemental no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Gardner further in this appeal.

Upon the foregoing reasons,

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

⁵ Our supreme court has “recognize[d] that the use of handcuffs does not in all cases render a suspect in custody for *Miranda* purposes.” *See State v. Martin*, 2012 WI 96, ¶34, 343 Wis. 2d 278, 816 N.W.2d 270.

IT IS FURTHER ORDERED that Attorney Katie Babe is relieved from further representing Charese A. Gardner in this appeal. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals