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April 21, 2020

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

2018AP1527-CRNM State of Wisconsin v. Chasvonne M. Lindsey
(L. C. No. 2016CF2235)

Before Stark, P.J., Hruz and Seidl, 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).

Counsel for Chasvonne Lindsey has filed a no-merit report concluding there is no basis to challenge Lindsey's convictions for first-degree recklessly endangering safety. Lindsey was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude there is no merit

to any issue that could be raised on appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2017-18).[1]

According to the criminal complaint, the victim went to a grocery store on 42nd Street in Milwaukee, but left his vehicle unlocked and running while he went inside. When the victim exited the store, he observed Lindsey halfway inside the victim's vehicle. The victim yelled, and Lindsey backed out of the vehicle with his hands up. The victim then ran to the driver's door of his vehicle and was getting in the vehicle when he saw Lindsey reach in his waistband and pull out a small, black semi-automatic handgun. Lindsey then shot the victim before fleeing.

Lindsey was charged with one count of first-degree reckless injury, a Class D felony, and one count of possession of a firearm by a felon. Lindsey pled guilty to an amended charge of first-degree recklessly endangering safety, a Class F felony, and the firearm possession count was dismissed and read in.

Prior to sentencing, Lindsey wrote a letter to the circuit court requesting plea withdrawal, alleging that his attorney was ineffective for not showing him video surveillance of the incident, and also alleging that allergy medications had made him drowsy at the time of his plea. Lindsey's trial counsel then filed a motion to withdraw. At the plea withdrawal hearing, Lindsey's trial counsel informed the court that Lindsey no longer wanted to withdraw his plea. The court explained to Lindsey that it would be far more difficult to withdraw his plea after sentencing, and it continued the matter to allow Lindsey to consult further with his trial counsel.

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

When the matter reconvened, Lindsey advised the circuit court that he wished to keep his trial counsel and not withdraw his plea. The court again explained to Lindsey the different standards for plea withdrawal before and after sentencing. Because Lindsey had said that his allergy medications made him drowsy during his original plea colloquy, a second plea colloquy was conducted, at which time Lindsey was allowed to change his plea to no contest due to Lindsey's concern for potential civil liability arising out of his prior guilty plea. The court subsequently imposed a sentence consisting of six years' initial confinement and four years' extended supervision, consecutive to any other sentence Lindsey was serving.

Trial counsel filed a notice of intent to file postconviction relief. Lindsey nonetheless then filed several pro se motions seeking sentence modification. These pro se motions primarily involved the parties' belief that at the time of sentencing, Lindsey was serving a sentence for Milwaukee County case No. 2015CF3832. Because of the parties' belief that Lindsey was serving that sentence at the time the consecutive sentence was imposed in the present case, the circuit court did not order any sentence credit. However, Lindsey contended the confinement portion of his sentence in case No. 2015CF3832 had concluded, meaning Lindsey was being held only on the present case at the time of his sentencing, thus entitling him to sentence credit.

In addition, at the sentencing hearing in the present case, the State explained to the circuit court that case No. 2015CF3832 involved Lindsey calling police later in the evening of the day of the shooting, reporting that he had been shot in the leg by someone. However, police concluded that Lindsey had shot himself, which resulted in the conviction and prison sentence in case No. 2015CF3832 for being a felon in possession of a firearm. The State alleged at the sentencing hearing in the present case that the gun used to shoot the victim was different than the gun Lindsey used to shoot himself, based on the caliber of the ammunitions recovered.

Lindsey disputed in his pro se motions that there were two different weapons used, and he asserted that after shooting the victim in the present case, he shot himself in the leg when trying to place the gun in his pocket as he fled the scene. Lindsey claimed this information justified a sentence modification or, alternatively, a resentencing. Lindsey argued this new information showed that both the victim and Lindsey were shot within moments of each other and that there was no separate incident of gun violence. In Lindsey's view, the sentence in the present case, therefore, should have been ordered to be served concurrent to the sentence imposed in case No. 2015CF3832.

The circuit court denied the pro se motions, noting that a notice to pursue postconviction relief had been filed and appointment of postconviction counsel was likely. The court stated that Lindsey was obligated to address his concerns with his attorney and that his pro se filings could jeopardize his appellate rights.

In fact, postconviction counsel had been appointed, and counsel's subsequent postconviction motion addressed Lindsey's concerns. The postconviction motion requested sentence modification or, alternatively, resentencing. The postconviction motion also requested sentence credit.

The circuit court granted Lindsey the sentence credit requested, but it denied the motion for sentence modification or resentencing. The court found that Lindsey failed to show that the State's factual assertion regarding case No. 2015CF3832 was inaccurate and that Lindsey's version of what happened was true. The court determined that Lindsey's version of events was not a new factor because Lindsey was aware of the factual disagreement at the time of sentencing and simply withheld the information. The court then further explained that even assuming

Lindsey's version of the events was true, it was not relevant to the sentence imposed in the present case. The court stated that in sentencing Lindsey, it did not materially rely upon information that Lindsey used two separate firearms in the commission of these offenses but, rather, viewed Lindsey's possession of a gun different than his use of a gun. Therefore, it would have imposed the sentence in the present case consecutive to that imposed in case No. 2015CF3832 regardless of whether Lindsey used two different firearms in the commission of the offenses. The court later denied Lindsey's motion for reconsideration.

The no-merit report identifies potential issues regarding whether Lindsey's plea was knowingly, intelligently, and voluntarily entered; whether the circuit court erroneously exercised its sentencing discretion; and whether the court properly denied Lindsey's postconviction motion. Upon our independent review of the record, we agree with counsel's description, analysis, and conclusion that any challenge to these issues would lack arguable merit, and we will not further address the issues.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that attorney Christopher August is relieved of his obligation to further represent Chasvonne Lindsey in this matter. *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