



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 I

October 17, 2023

To:

Hon. Glenn H. Yamahiro
Circuit Court Judge
Electronic Notice

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

Angela Conrad Kachelski
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Raymond Daniel Rivera 492758
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2023AP230-CRNM State of Wisconsin v. Raymond Daniel Rivera
(L.C. # 2020CF2330)

Before White, C.J., Donald, 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).

Raymond Daniel Rivera appeals a judgment convicting him of one count of fleeing or eluding an officer, one count of first-degree recklessly endangering safety as a party to a crime, and one count of being a felon in possession of a firearm. Rivera's appellate counsel, Angela C. Kachelski, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Rivera received a copy of the report, was advised of his right to respond, and has not filed a response. We have independently reviewed the record and the no-

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

merit report as mandated by *Anders*. We conclude that there are no issues of arguable merit that could be pursued on appeal. We, therefore, summarily affirm.

On July 6, 2020, the State charged Rivera with one count of fleeing an officer, one count of first-degree reckless homicide by use of a dangerous weapon, one count of first-degree recklessly endangering safety, and one count of possession of a firearm by a felon. According to the facts in the record, on July 1, 2020, Rivera led Milwaukee police on a high speed chase for approximately two miles before jumping out of a white Chrysler and running through a crowd of protesters. Police lost sight of him. After running away on foot, Rivera approached a vehicle with three female occupants and told them that he needed a ride because he had just been involved in a high-speed chase. The women drove Rivera to the location he specified, where he exited their car, walked away briefly, and then came back to the car window to speak with one of the women. Shortly thereafter, a different white Chrysler pulled up next to where the women and Rivera were stopped. Rivera began shooting at the Chrysler. The driver of the car was killed as a result of gunshot wounds to his head. The other occupants in the Chrysler were unhurt, though one occupant later retrieved a projectile bullet casing from his hair.

Rivera waived his right to a jury trial and instead had a trial to the court. Multiple witnesses, including law enforcement, the three women who drove Rivera to the spot of the shooting, and an occupant of the shot-up white Chrysler, all testified. The trial court found Rivera guilty of one count of fleeing or eluding an officer, one count of first-degree recklessly endangering safety as a party to a crime, and one count of being a felon in possession of a firearm. The trial court stated that because the evidence suggested the presence of two shooters at the scene of the crime, it could not determine beyond a reasonable doubt that Rivera caused the victim's death. The trial court therefore acquitted Rivera of the reckless homicide charge.

The trial court sentenced Rivera to a total sentence of fourteen years of initial incarceration, and twelve years of extended supervision.

Appellate counsel's no-merit report sets forth counsel's review of a pretrial motion to suppress evidence, Rivera's waiver of his right to a jury trial, opening statements, witness testimony, Rivera's waiver of his right to testify, the defense's motion for a directed verdict, closing arguments, and the verdicts. We have independently reviewed the record and agree with counsel's description of each stage of the proceedings.

The no-merit report next addresses the sufficiency of the evidence. We must affirm the verdict unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force, that as a matter of law no reasonable trier of fact could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis.2d 493, 501, 451 N.W.2d 752 (1990). When acting as fact finder, the trial court is the ultimate arbiter of witness credibility. *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345.

We agree with appellate counsel's analysis as to the sufficiency of the evidence. Without attempting to recite the evidence in detail here, we are satisfied that the testimony of the multiple witnesses, along with the properly-admitted exhibits, is sufficient to support the convictions. The testimony was not inherently incredible and, if believed by the trial court, was sufficient to meet all the elements of the charges of conviction. We agree with appellate counsel that a challenge to the sufficiency of the evidence would lack arguable merit.

Appellate counsel also addresses whether the trial court erroneously 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 considered the relevant sentencing objectives and factors, particularly the seriousness of the offenses and the threat Rivera posed to the community. The sentence the trial court imposed is within the 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 would be no arguable merit to a challenge to the trial court's sentencing discretion.

Our review of the record discloses no other potential issue for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to further represent Rivera on appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Angela C. Kachelski is relieved from further representing Raymond Daniel Rivera 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