



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

December 27, 2023

To:

Hon. Michelle Ackerman Havas
Circuit Court Judge
Electronic Notice

Carl W. Chesshir
Electronic Notice

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

Jennifer L. Vandermeuse
Electronic Notice

Davion S. Pickens 684432
Waupun Correctional Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2021AP1972-CRNM	State of Wisconsin v. Davion S. Pickens (L.C. # 2017CF4134)
2021AP1973-CRNM	State of Wisconsin v. Davion S. Pickens (L.C. # 2017CF5200)
2021AP1974-CRNM	State of Wisconsin v. Davion S. Pickens (L.C. # 2017CF5662)

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).

Davion S. Pickens appeals his judgments of conviction entered after he pled guilty to various charges brought in the cases referenced above. His appellate counsel, Carl W. Chessir, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).¹ Pickens filed a response, and counsel filed a supplemental report. Upon this court's independent review of the record as mandated by *Anders*, counsel's

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

reports, and Pickens' response, we conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

The charges against Pickens stemmed from several incidents that occurred between September and December 2017; he was charged in three separate cases. Pickens ultimately entered into a plea agreement to resolve all three cases, in which he pled guilty to five charges. The charges and the facts relevant to the charges are as follows:

- Fleeting an officer, as a party to a crime, after leading officers on a chase that lasted for more than sixteen miles at speeds in excess of eighty miles-per-hour on major thoroughfares in Milwaukee, running red lights and stop signs and driving the wrong way into traffic
- Theft from person, for stealing a loaded 9mm pistol from the waistband of a woman who was standing at the counter of a gas station; Pickens was later identified after a detective with the Milwaukee Police Department viewed a high quality surveillance video of the incident
- Second-degree recklessly endangering safety, as a party to a crime, for shooting into a vehicle from another vehicle; occupants of that vehicle identified Pickens as the person who had reached under his seat and was holding a gun just prior to shots being fired
- Second-degree reckless injury using a dangerous weapon, as a party to a crime, for shooting a woman during an argument; the victim identified Pickens as the

person who pulled out a handgun and a rifle during the argument moments before she was shot

- Possession of THC with the intent to deliver, as a party to a crime, after Pickens was again taken into custody on a warrant; he was removed from a vehicle that contained over 600 grams of marijuana, over \$8,000 in cash, and three firearms

Numerous other charges were dismissed but read in for sentencing purposes.

The circuit court accepted Pickens' pleas in August 2019. The court imposed a global sentence of seventeen and one-half years of initial confinement to be followed by twelve years of extended supervision. This no-merit appeal follows.

In the no-merit report, appellate counsel first addresses whether Pickens' pleas were knowingly, voluntarily, and intelligently entered. The record reflects that the plea colloquy by the circuit court complied with the requirements set forth in WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Additionally, the court confirmed that Pickens signed and understood the plea questionnaire and waiver of rights form, which further demonstrates that his pleas were knowingly, voluntarily, and intelligently entered. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827, 830, 416 N.W.2d 627 (Ct. App. 1987). We therefore agree with counsel's analysis that there would be no arguable merit to an appeal of that issue.

The other issue addressed in the no-merit report is the circuit court's exercise of discretion in sentencing Pickens. The record reflects that the court considered relevant sentencing objectives and factors. See *State v. Gallion*, 2004 WI 42, ¶¶17, 40, 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. Furthermore, the terms of imprisonment imposed by the court are within the maximums authorized by law, and thus would not be considered to be unduly harsh or unconscionable. *See State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. We therefore agree with counsel’s analysis that there would be no arguable merit to an appeal challenging Pickens’ sentence.

Turning to Pickens’ response, he asserts that he has newly-discovered evidence in the form of a letter written by his co-defendant in one of the cases, Jorian D. Bruce. Pickens contends that Bruce wrote the letter to another person directing him to “get a gun that was tied to all [Pickens’] cases, hide that gun” and then “say[] it was [Pickens] who hid it.” Pickens states that the letter was found during the execution of a search warrant in June 2018, but that he was not aware of its existence until 2021. He also asserts that the failure to inform him of the letter was a *Brady*² violation, and that his trial counsel was ineffective, presumably for not investigating this the letter.

Newly-discovered evidence must meet the following criteria: “(1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking the evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative.” *State v. Plude*, 2008 WI 58, ¶32, 310 Wis. 2d 28, 750 N.W.2d 42 (citation omitted). To establish a *Brady* violation, there are three elements that must be satisfied: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory or impeaching; (2) the evidence must

² *Brady v. Maryland*, 373 U.S. 83 (1963).

have been suppressed by the State, either willfully or inadvertently; and (3) the evidence must be material. *State v. Harris*, 2004 WI 64, ¶15, 272 Wis. 2d 80, 680 N.W.2d 737.

In his supplemental report, appellate counsel focuses his analysis on the common factor in each of these standards—that for a claim under either standard to succeed, the evidence in question must be material to the cases underlying this appeal. Counsel states that Pickens stipulated to the facts in the criminal complaints which were then used as the factual bases for accepting Pickens’ guilty pleas. Those complaints were filed in September, November, and December of 2017; in other words, prior to the discovery in 2018 of the letter written by Bruce. Therefore, the State did not rely on information from Bruce’s letter to charge Pickens.

Additionally, appellate counsel describes the elements that the State was required to prove for each of the charges, observing that the facts in the complaints were sufficient to prove each element for every crime to which Pickens pled. In other words, the information in the letter by Bruce was not necessary to secure Pickens’ convictions, and therefore it is not material to these cases. Accordingly, neither a claim of newly-discovered evidence nor a *Brady* claim could succeed. See *Plude*, 310 Wis. 2d 28, ¶32; *Harris*, 272 Wis. 2d 80, ¶15. We agree with counsel’s conclusion that there would be no arguable merit to pursuing either claim on appeal.

Our independent review of the records discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit reports, affirms the convictions, and discharges appellate counsel of the obligation to represent Pickens further in this appeal.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Carl W. Chessir is relieved of further representation of Davion S. Pickens 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