



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

November 26, 2024

To:

Hon. Mark A. Sanders
Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

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

Otha Jose Brown Jr. 483436
Waupun Correctional Inst.
P.O. Box 351
Waupun, WI 53963-0351

Olivia Garman
Electronic Notice

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

2022AP1885-CRNM State of Wisconsin v. Otha Jose Brown, Jr. (L.C. # 2017CF3609)

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).

Otha Jose Brown, Jr., appeals from a judgment of conviction for first-degree intentional homicide as a party to a crime. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),¹ and *Anders v. California*, 386 U.S. 738 (1967).² Brown received a copy of the report, was advised of his right to file a response, and has elected not to do

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

² The no-merit report was filed by Attorney Lauren J. Breckenfelder. On April 1, 2024, Attorney Olivia Garman was substituted as counsel for Brown and now represents him in this appeal.

so. Upon consideration of the report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The State charged Brown with first-degree intentional homicide as a party to a crime following the death of J.J. The charge stemmed from a shooting at an ice cream stand during the middle of the day. The complaint alleged that prior to the shooting Brown was driving a car with two other men inside. One of Brown's passengers, later identified as Brown's nephew, Tony Powell, saw J.J. and said that he believed J.J. had shot a friend. Powell then told Brown he was going to kill J.J. Brown pulled the car over and waited for Powell to tie a mask around his face. Brown then drove to the parking lot behind the ice cream stand where J.J. was and got out of the car with Powell, who proceeded to shoot J.J. multiple times, which resulted in J.J.'s death. The two fled from the scene.

The case proceeded to trial where a jury found Brown guilty of the charge. The circuit court sentenced him to life imprisonment with eligibility for release to extended supervision after thirty-eight years.

The comprehensive no-merit report addresses whether there was sufficient credible evidence to support the guilty verdict. The no-merit report sets forth the applicable standard of review and the evidence satisfying the elements of the crime. An appellate court will not overturn a conviction "unless the evidence, viewed most favorably to the [S]tate and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *State*

v. Poellinger, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990). The evidence at trial was sufficient to support the verdict.

The no-merit report additionally concludes—and we agree—that there are no issues of arguable merit stemming from the circuit court’s denial of Brown’s suppression motion, Brown’s decision not to testify, and the circuit court’s decision not to allow Brown to fire trial counsel mid-trial. With regard to the merits of the suppression motion, there is no arguable basis to claim that Brown’s statements were involuntary or that his invocation of the right to silence was not scrupulously honored. *See State v. Clappes*, 136 Wis. 2d 222, 235-36, 401 N.W.2d 759 (1987) (explaining the rules regarding the admissibility of statements made by a defendant to police officers); *see also State v. Markwardt*, 2007 WI App 242, ¶24, 306 Wis. 2d 420, 742 N.W.2d 546 (discussing the right to remain silent).

The no-merit report ends with a discussion of whether there would be arguable merit to an appellate challenge to Brown’s sentence. The circuit court considered appropriate sentencing objectives and explained that the sentence it imposed was based on various sentencing criteria applied to the facts of this case. *See State v. Brown*, 2006 WI 131, ¶26, 298 Wis. 2d 37, 725 N.W.2d 262. Because the circuit court properly exercised its discretion, there would be no arguable merit to an appellate challenge to the sentence.

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

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Olivia Garman is relieved of further representation of Brown 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