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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](http://www.wicourts.gov)

**DISTRICT II**

January 8, 2025

*To:*

Hon. William J. Domina  
Circuit Court Judge  
Electronic Notice

Monica Paz  
Clerk of Circuit Court  
Waukesha County Courthouse  
Electronic Notice

Carl W. Chesshir  
Electronic Notice

Jennifer L. Vandermeuse  
Electronic Notice

London D. White #612824  
Green Bay Correctional Inst.  
P.O. Box 19033  
Green Bay, WI 54307-9033

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

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2023AP1504-CRNM      State of Wisconsin v. London D. White (L.C. #2016CF656)

Before Gundrum, P.J., Neubauer and Lazar, 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).**

London D. White appeals from a judgment of conviction for one count of first-degree intentional homicide by use of a dangerous weapon and one count of possession with intent to deliver THC as a party to a crime. *See* WIS. STAT. §§ 940.01(1)(a), 939.63(1)(b), 961.41(1m)(h)1.,

939.05 (2015-16).<sup>1</sup> White also appeals from an order denying his postconviction motion.<sup>2</sup> His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967).<sup>3</sup> White filed a response. After reviewing the record, counsel's report, and White's response, we conclude that there are no issues of arguable merit for appeal. Therefore, we summarily affirm the judgment and order. *See* WIS. STAT. RULE 809.21.

White was convicted following a trial to the circuit court where White testified in his own defense. The State presented evidence that White and another man drove to a parking lot to meet with G.E., who had arranged to sell a quarter pound of marijuana to White. It is undisputed that G.E. did not actually have any marijuana to sell and instead intended to rob White using a gun that he brought to the meeting. According to White's own testimony, G.E. got into the backseat of White's parked vehicle, pulled out his gun, pointed it at White's neck, and demanded that White turn over his money. There was a scuffle during which G.E. grabbed White's money from his hand and then fled the vehicle. White, who had his own gun, got out of the car and chased G.E., firing multiple times as G.E. ran away from the vehicle. G.E. was struck by the gunfire. Eventually, when G.E. was lying on the ground, White retrieved the money that G.E. had taken

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

<sup>2</sup> The Honorable Ralph M. Ramirez presided over the court trial and sentencing, and the Honorable Jennifer R. Dorow denied White's postconviction motion.

<sup>3</sup> This is the second time this case has been in this court as a no-merit appeal. In the first no-merit appeal, we directed appellate counsel to file a supplemental no-merit report addressing two issues concerning White's drug conviction. Counsel's response was delayed as White explored hiring separate counsel or proceeding pro se but ultimately elected to continue with appointed counsel. Counsel then moved to dismiss the no-merit appeal so that he could file a postconviction motion challenging the drug conviction. We granted the motion, *see State v. White*, No. 2018AP1582-CRNM, unpublished slip op. and order (WI App Mar. 2, 2023), and counsel filed the postconviction motion that we address in this decision.

from him and also took G.E.'s gun. White then ran back to his car, and he and the other man drove away.

G.E.'s friend, B.H, testified that he accompanied G.E. to the parking lot and saw White chase G.E. from White's vehicle. B.H. said that when he heard the gunshots, he "ducked and rolled" and then saw White standing over G.E., who was lying on the ground. B.H. testified that he saw White point his gun at G.E.'s head and then fire the weapon.

Another witness testified that he was in the store parking lot when he heard gunshots coming from a nearby grassy area by a pond where G.E. was lying on the ground.

The circuit court rejected White's self-defense claim, finding that White chased G.E. to retrieve the money G.E. took from him, some of which was counterfeit and some of which was real. The court noted that G.E.'s gun was never fired and that White's gun was fired at least six times, as evidenced by six spent cartridges recovered at the scene. The court further found that White "followed [G.E.] to the grassy area and administered a last shot," which it said demonstrated White's intent to kill G.E.

The circuit court also found White guilty of the drug charge. It found that White had conspired to possess marijuana by arranging to meet G.E. to purchase an amount of marijuana that was inconsistent with an amount for personal use.

At sentencing, the circuit court was required to impose a life sentence for the conviction of first-degree intentional homicide. *See* WIS. STAT. § 939.50(3)(a). The only issue was whether to find White eligible for release to extended supervision after serving at least twenty years. *See* WIS. STAT. § 973.014(1g). The circuit court ordered that White would be eligible to seek extended

supervision after serving thirty-five years. It imposed a concurrent sentence of eighteen months of initial confinement and two years of extended supervision for the drug conviction. White was also ordered to pay \$10,458 in restitution.

Counsel was appointed to represent White to pursue postconviction and appellate relief. White's first no-merit appeal was dismissed so that counsel could file a postconviction motion concerning the drug conviction. That postconviction motion alleged there was insufficient evidence to support White's conviction for possession with intent to deliver THC. The circuit court held a hearing on the motion and denied it. This no-merit appeal follows.

The no-merit report addresses seven primary issues: (1) whether there was sufficient evidence to support the convictions for both crimes; (2) whether the circuit court erroneously rejected White's self-defense claim; (3) whether White's *Miranda* rights were violated; (4) whether the court erroneously exercised its sentencing discretion; (5) whether the court erroneously exercised its discretion by ordering restitution; (6) whether White knowingly, intelligently, and voluntarily waived his right to a jury trial; and (7) whether trial counsel was ineffective for "seemingly conceding" the drug count during closing argument to the court. The no-merit report's discussion of those issues includes references to relevant statutes, case law, transcripts, and other court documents. This court is satisfied that the no-merit report properly analyzes the issues it raises, and we agree there would be no arguable merit to further proceedings

on those issues. Nonetheless, we will briefly address several of those issues in light of White's response to the no-merit report.<sup>4</sup>

We begin with sufficiency of the evidence and White's self-defense claim concerning the first-degree intentional homicide count. When reviewing the sufficiency of the evidence, we consider whether "the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). In his response, White argues there was insufficient evidence that he had intent to kill G.E., and he points to statements by the circuit court finding that White met with G.E. intending to buy marijuana, not to use a gun. However, the fact that White may not have planned to kill G.E. prior to the meeting does not mean that White did not subsequently form the intent to kill G.E. after G.E. robbed him. The circuit court's findings that White intentionally fired his weapon at G.E. multiple times, including one shot when G.E. was already lying on the ground, are sufficient to satisfy the element of intent.

White argues that the associate medical examiner's testimony does not support the circuit court's finding that White fired a gunshot directly into G.E. when he was lying on the ground. Dr. Zelda Okia, who conducted the autopsy, testified that one bullet entered G.E.'s face near his right eyebrow and exited on the left side of his scalp. She testified that the path of the bullet was "right to left and slightly upward," and said this means "the gun [was] likely inferior, below, where

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<sup>4</sup> We will not attempt to address every assertion in White's twenty-page response to the no-merit report, especially where the no-merit report has already addressed the issues discussed in the response. We conclude that White's response has not identified any issues of potential merit that warrant further postconviction or appellate proceedings.

it's being fired from." She further testified that the other bullet entered G.E.'s chest and became lodged in his neck, and she said it also traveled in an upward trajectory. Dr. Okia said she could not determine how far the bullets traveled before striking White or which wound was inflicted first.

In his response, White argues Dr. Okia's testimony about the bullet trajectories suggests he was shooting from behind his car and disproves the assertion that he fired the gun into G.E. when G.E. was lying on the ground. However, Dr. Okia clarified her testimony when questioned by the circuit court:

THE COURT: Just for clarification, Doctor, for my clarification, so when you said the path of the bullet on the head wound was upward, that it passed from the right, close to the eyebrow, and came out on the left.

THE WITNESS: Yes.

THE COURT: That's in relation to an upright head, correct?

THE WITNESS: Yes.

THE COURT: So, in fact, if, for example, if somebody had been lying down and got shot, the path could have been, in fact, downward, correct?

THE WITNESS: Yes.

THE COURT: So it passed through and then moved towards downward, correct?

THE WITNESS: Yes.

THE COURT: So it's just in relation to where the head is positioned at any time.

THE WITNESS: Exactly, exactly.

This clarifying testimony provides a basis for the circuit court to find, consistent with B.H.’s testimony, that White fired his gun at G.E. while G.E. was lying on the ground. This evidence supports a finding of intent to kill. There is no potential merit to an appeal on this ground.

White also argues that the circuit court was wrong to reject his self-defense claim. Referring to Wis JI—Criminal 1017, the court considered whether White “reasonably believed that he was preventing or terminating an unlawful interference with his person and reasonably believed the force was necessary to prevent imminent death or great bodily harm to himself,” which would negate his guilt for any homicide offense. The circuit court further considered whether White caused G.E.’s death “with the intent to kill and actually believed the force was necessary to prevent imminent death or great bodily harm to himself, but the belief or the amount of force was unreasonable,” which would mean he was liable for second-degree intentional homicide instead of first-degree intentional homicide. The court found that White did not fire the gun to prevent harm to himself, noting that G.E. was not shot while he was still in White’s car, where White might have been able to exercise self-defense. The court further found that White’s purpose in exiting the vehicle with his gun and chasing G.E. “was to retrieve money” and that “maybe he was angry and maybe it was an act of bravado as well.” There is adequate testimony to support the circuit court’s findings, and there would be no arguable merit to pursue further postconviction or appellate proceedings based on White’s self-defense claim.

We turn next to the sufficiency of the evidence to support the drug conviction. The postconviction motion questioned the sufficiency of the evidence to support a conviction for possession with intent to deliver marijuana where G.E. did not have any marijuana in the backpack he carried to the car and the only marijuana recovered was thrown from White’s vehicle during a police chase that followed the shooting. At trial, the State explicitly told the circuit court that its

theory supporting a conviction on the drug count was that White conspired with G.E. to purchase two ounces of marijuana, not that he possessed the marijuana that was thrown from the vehicle. At the hearing on the postconviction motion, the State reiterated that it had proven there was a conspiracy between White and G.E. to sell drugs to White. The circuit court agreed with the State that there was sufficient evidence to support the drug conviction, explaining that White was charged as a party to a crime and that one way to be a party to a crime is to engage in a conspiracy to commit the crime. *See* WIS. STAT. § 939.05(2)(c). We agree that there was sufficient evidence to support the court’s finding that White conspired to possess the drugs. Thus, there would be no arguable merit to further proceedings challenging the sufficiency of the evidence for the drug conviction.

Next, we address the issue whether trial counsel provided ineffective assistance by “seemingly conceding” the drug count when he told the circuit court he was “really not concerned about that because [White] did admit that he did go out there to purchase a quantity of THC consistent with the amount for a person to sell. So that part we have no issue with.” To establish ineffective assistance of counsel, a defendant must show deficient performance and prejudice. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). The no-merit report suggests trial counsel’s strategy was reasonable and that in any event, White was not prejudiced because White’s trial testimony conceded that he intended to purchase marijuana from G.E. We agree there would be no arguable merit to asserting that trial counsel’s performance was ineffective where White’s own testimony supported the conviction. Further, there would be no arguable merit to asserting that the circuit court’s findings, as the trier of fact, would have been different but for counsel’s comment during closing argument.

White's response to the no-merit report, in addition to disputing each of counsel's conclusions, further asserts that trial counsel provided ineffective assistance in numerous ways.<sup>5</sup> For instance, White argues that trial counsel should have moved "to suppress the evidence obtained by the medical examiner," filed other suppression motions, called a defense expert "to better understand medical showings in autopsy report," and "ma[d]e certain arguments concerning the physical evidence presented at trial." Having read the trial transcripts and reviewed White's claims, this court concludes that White has not identified any issues of arguable merit that require additional analysis or further proceedings.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Carl W. Chesshir of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Carl W. Chesshir is relieved from further representing White in this appeal. *See* WIS. STAT. RULE 809.32(3).

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<sup>5</sup> White's response also alleges that Attorney Chesshir has provided ineffective assistance during postconviction and appellate proceedings. Any potential claims concerning Attorney Chesshir's performance are not before the court at this time. Rather, those claims must be raised after the direct appeal process has been completed. *See generally* WIS. STAT. § 974.06; *State v. Knight*, 168 Wis. 2d 509, 484 N.W.2d 540 (1992).

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*