



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 II

February 26, 2025

To:

Hon. Robert S. Repischak
Circuit Court Judge
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Patricia J. Hanson
Racine County District Attorney's Office
730 Wisconsin Avenue
Racine, WI 53403

Brian Patrick Mullins
Electronic Notice

Daiviontae Tyrell Johnson #706838
Waupun Correctional Inst.
P.O. Box 351
Waupun, WI 53963-0351

Jennifer L. Vandermeuse
Electronic Notice

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

2023AP2305-CRNM	State of Wisconsin v. Daiviontae Tyrell Johnson (L.C. #2019CF1146)
2023AP2306-CRNM	State of Wisconsin v. Daiviontae Tyrell Johnson (L.C. #2020CF858)

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).

Daiviontae Tyrell Johnson appeals judgments of conviction for two counts of disorderly conduct by use of a dangerous weapon and one count of interfering with a fire alarm system. Appointed appellate counsel has filed a no-merit report pursuant to

WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Johnson was advised of his right to respond to the no-merit report and has not responded. Upon consideration of the no-merit report, and following an independent review of the record as mandated by *Anders* and RULE 809.32, we conclude there is no arguable merit to any issue that could be raised on appeal and summarily affirm the judgments. *See* WIS. STAT. RULE 809.21(1).

The State filed a fifteen-count criminal complaint in Racine County Circuit Court case No. 2019CF1146, including two counts of disorderly conduct by use of a dangerous weapon based on allegations that Johnson had pointed a firearm at his girlfriend's sisters and had a few days later "pistol whipped" one of the sisters. Several months later he garnered additional charges in Racine County Circuit Court case No. 2020CF858, including interfering with a fire alarm system. The allegations were that Johnson pulled a sprinkler head from the ceiling and flooded his cell while he was in custody.

After Johnson was convicted by a jury in another Racine County case, he reached a global plea agreement on his remaining cases.² As relevant here, Johnson agreed to plead guilty to the two disorderly conduct counts with the dangerous weapon penalty enhancer. *See* WIS. STAT. §§ 947.01, 939.63(1)(a). He also agreed to plead guilty to interfering with a fire alarm system. *See* WIS. STAT. § 941.12(1). The remaining counts were dismissed and read in, and both

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

² The conviction resulting from Johnson's plea in a third case, Racine County Circuit Court case No. 2019CF516, is not part of our consideration of these no-merit matters, nor is the conviction resulting from the jury trial. The no-merit report represents that no notice of intent to pursue postconviction relief was filed from those judgments of conviction.

sides were free to argue at sentencing. Following a colloquy, the circuit court accepted Johnson's guilty pleas.

At sentencing, both parties acknowledged that a prison sentence was appropriate.³ The circuit court considered the nature and gravity of the offenses, Johnson's character, his treatment and rehabilitative needs, and the protection of the public. On each of the disorderly conduct convictions, the court ordered consecutive nine-month jail sentences, stayed in favor of two years' probation.⁴ For interfering with a fire alarm system, the court ordered an imposed-and-stayed sentence of three months' jail, with one year of probation and restitution, concurrent to the disorderly conduct case. The court articulated conditions of extended supervision and made Johnson eligible for early release programming. It subsequently amended the amount of sentence credit to which Johnson was entitled.

The no-merit report addresses whether Johnson could raise any nonfrivolous issues regarding the validity of Johnson's pleas, the sufficiency of the plea colloquy, the circuit court's exercise of sentencing discretion, and Johnson's due process right to be sentenced upon accurate information. Our review of the appellate record satisfies us that the no-merit report sufficiently analyzes these issues and properly concludes that any challenge based upon them would lack arguable merit. Our review of the appellate record discloses no other potentially meritorious issues for appeal.

³ The parties focused on the total sentence, which, again, included the 2019CF516 case and the case for which Johnson was tried, neither of which is at issue in these appeals.

⁴ This was a permissible probation term. *See* WIS. STAT. § 973.09(2).

Based on the foregoing,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Brian Patrick Mullins is relieved of further responsibility for representing Daiviontae Tyrell Johnson in connection with these appeals. *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