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DISTRICT II

April 16, 2025

To:

Hon. Natasha L. Torry
Circuit Court Judge
Electronic Notice

John Blimling
Electronic Notice

Chris Koenig
Clerk of Circuit Court
Sheboygan County Courthouse
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Ricardo A. Hibbler, #645958
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Marcella DePeters
Electronic Notice

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

2024AP1449-CRNM State of Wisconsin v. Ricardo A. Hibbler (L.C. #2017CF787)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Ricardo A. Hibbler appeals from a judgment of the circuit court, following a jury trial, convicting him of first-degree recklessly endangering safety and felon in possession of a firearm, both as a habitual criminal offender. Hibbler also appeals from the court's order denying his postconviction motion. Attorney Marcella DePeters has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2023-24);¹ *Anders v. California*,

¹ All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

386 U.S. 738, 744 (1967); and *State ex rel. McCoy v. Wisconsin Ct. of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). Hibbler was sent a copy of the report and notified of his right to file a response. Hibbler has not responded. Upon consideration of the report and an independent review of the Record, we conclude there are no issues with arguable merit for appeal. We summarily affirm. *See* WIS. STAT. RULE 809.21.

Following a three-day jury trial, Hibbler was convicted of first-degree recklessly endangering safety and felon in possession of a firearm for his involvement in a shooting at a city park during a crowded music event. Both convictions carried penalty enhancers based on Hibbler's status as a habitual criminal offender. The circuit court imposed a sentence of nine years of initial confinement and five years of extended supervision for recklessly endangering safety, and a consecutive five years of initial confinement and five years of extended supervision for the unlawful firearm possession. After sentencing, Hibbler filed a postconviction motion alleging ineffective assistance of counsel because trial counsel failed to call witnesses material to his defense. The court held two evidentiary hearings on Hibbler's motion and subsequently denied it, finding that trial counsel was not ineffective.² This no-merit appeal follows.

The no-merit report addresses the sufficiency of the evidence to support Hibbler's convictions. It also discusses whether the circuit court erroneously exercised its discretion in sentencing Hibbler and denying his postconviction motion.

² Hibbler also argued in his postconviction motion that he was entitled to additional sentence credit. The State conceded that Hibbler was entitled to additional sentence credit, and the circuit court agreed. The sentence-credit issue is not before us on appeal and, thus, we address it no further.

The no-merit report first addresses whether the evidence at Hibbler’s jury trial was sufficient to support his conviction. When reviewing the sufficiency of the evidence, we may not substitute our judgment for that of the jury “unless 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).

Our review of the trial transcripts persuades us that the State produced ample evidence to convict Hibbler of reckless endangerment and of being a felon in possession of a firearm. That evidence included eyewitness accounts from people who were at the park for the music event during the shooting. Witnesses testified to having seen Hibbler shooting toward a group with whom he had been arguing at the event. Several witnesses told a similar story, corroborating Hibbler’s problems involving another man and Hibbler’s former girlfriend, including Hibbler and the man arguing right before the shooting began. The evidence also included detailed testimony from law enforcement and forensic analysts regarding the crime scene, the bullet casings found on scene, the property damage caused by the shooting, and the investigation into the events on the night of the shooting. The evidence presented at trial was more than sufficient for a reasonable jury to have found him guilty on both charged counts. We agree with counsel that a challenge to the sufficiency of the evidence would lack arguable merit.

The no-merit report next addresses whether the circuit court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well-established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. Hibbler was provided an opportunity

to address the court, and he did so. The Record shows no other grounds from which we could conclude that the court erroneously exercised its sentencing discretion. There is no arguable merit to this issue.

Further, the sentence is not excessive or too harsh. Hibbler faced a maximum of twenty-two and one-half years of initial confinement on both counts. The court imposed only fourteen years—less the two-thirds of the maximum penalty. Under the circumstances, it cannot reasonably be argued that Hibbler’s sentence is excessive, much less so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There is no arguable merit to this issue.

The no-merit report next addresses whether the circuit court erroneously exercised its discretion in denying Hibbler’s postconviction motion alleging ineffective assistance of trial counsel for failure to subpoena and call certain witnesses. The witnesses that Hibbler sought to call purportedly would have testified that they did not see Hibbler using a gun that night, but they either had not initially come forward to police or had provided police with conflicting information during the criminal investigation.

In cases where a circuit court finds that trial counsel was not ineffective after hearing testimony of witnesses, as was the case here, the circuit court is the arbiter of the credibility of the witnesses and how much weight to give each witness’s testimony. *State v. Peppertree Resort Villas, Inc.*, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345. The court’s decision to deny Hibbler’s motion came after hearing the testimony of the would-be witnesses and of trial counsel. It was based at least in part on the court’s assessment of the various witnesses’ testimony, including their credibility. We will not substitute our judgment for that of

the circuit court's when the circuit court's decision that trial counsel was not ineffective is based on the court's evaluation of the credibility of the testimony presented during the hearing. *State v. Quarzenski*, 2007 WI App 212, ¶19, 305 Wis. 2d 525, 739 N.W.2d 844. We agree with counsel that there is no arguably meritorious basis to claim that the court erroneously exercised its discretion in denying the postconviction motion.

Finally, our independent review of the Record—including search warrants, voir dire and jury selection, jury instructions, the colloquy surrounding Hibbler's decision to exercise his right to not testify, opening statements, and closing arguments—does not disclose any potentially meritorious issue for appeal. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32. 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 Marcella DePeters 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 Marcella DePeters is relieved from further representing Ricardo A. Hibbler 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