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DISTRICT I

July 29, 2025

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Circuit Court Judge
Electronic Notice

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

2023AP1715-CRNM State of Wisconsin v. Derek Allen Hinton (L.C. # 2019CF4438)

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).

Derek Allen Hinton appeals a judgment, entered on a jury's verdict, convicting him of attempted burglary of a building as a repeater. His appellate counsel, David Malkus, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24)¹ and *Anders v. California*, 386 U.S. 738 (1967). Hinton received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the

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

record as mandated by *Anders*, this court summarily affirms the judgment because there is no arguable merit to any issue that could be pursued on appeal. *See* WIS. STAT. RULE 809.21.

The State charged Hinton with attempted burglary of a building or dwelling as a repeater. According to the complaint, police responded to the scene of a burglary that was underway and saw Hinton crouched near the back door of a home. Hinton fled when police announced their presence but was arrested following a foot chase. When the officers searched Hinton, they found a screwdriver. Upon returning to the home, an officer found pry marks near the lock on the backdoor and “burglarious tools” inside a bag nearby. At the time of his arrest in this matter, Hinton was on extended supervision for a separate felony matter.

The case proceeded to trial, and the jury found Hinton guilty. The circuit court sentenced Hinton to three years and six months of initial confinement and two years and six months of extended supervision consecutive to any other sentence. Hinton subsequently filed a postconviction motion requesting 66 days of sentence credit, which the circuit court granted.

The no-merit report discusses whether Hinton could challenge the sufficiency of the evidence. We agree with counsel that there is no arguable merit to this issue. 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, which included testimony from multiple witnesses called by the State, including the responding police officer, was sufficient to support the verdict. We also agree with counsel that there are no other

issues of arguable merit relating to pretrial rulings, jury selection, opening statements, closing arguments, and jury instructions.

The no-merit report next addresses Hinton's sentence, which did not exceed the legal maximum. We note that the presentence investigation (PSI) report recommended that Hinton be sentenced to three to four years of initial confinement and three to four years of extended supervision. The recommendation as to extended supervision exceeded the maximum amount of extended supervision time that Hinton faced, which was two years and six months. However, at the beginning of the sentencing hearing, the State carefully detailed the specifics of the sentence that Hinton faced and properly stated the maximums as to both initial confinement and extended supervision. The circuit court went on to sentence Hinton to the maximum amount of extended supervision time allowed by statute. On this record, there would be no arguable merit to a claim that Hinton is entitled to resentencing because the court relied on inaccurate information in the PSI when imposing his sentence. *See State v. Tiepelman*, 2006 WI 66, ¶26, 291 Wis. 2d 179, 717 N.W.2d 1.

As to discretionary issues related to sentencing, the standards for the circuit court and this court 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. There is no arguable merit to this issue.

A review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney David Malkus is relieved of further representation of Derek Allen Hinton 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