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DISTRICT II

September 6, 2023

To:

Hon. Richard J. Nuss
Circuit Court Judge
Electronic Notice

Ramona Geib
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

George Tauscheck
Electronic Notice

Desmond F. Hicks #367831
Redgranite Correctional Inst.
P.O. Box 925
Redgranite, WI 54970-0925

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

2022AP526-CRNM	State of Wisconsin v. Desmond F. Hicks (L.C. #2018CF506)
2022AP527-CRNM	State of Wisconsin v. Desmond F. Hicks (L.C. #2018CF639)
2022AP528-CRNM	State of Wisconsin v. Desmond F. Hicks (L.C. #2020CF618)
2022AP529-CRNM	State of Wisconsin v. Desmond F. Hicks (L.C. #2019CM809)

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).

Desmond F. Hicks appeals from judgments convicting him of several crimes. Attorney George Tauscheck, as appointed counsel for Hicks, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Hicks with a copy of the report, Hicks responded, and counsel filed a supplemental no-

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

merit report. We conclude that these cases are appropriate for summary disposition. After our independent review of the records, we conclude that there is no arguable merit to any issue that could be raised on appeal. We summarily affirm the judgments. *See* WIS. STAT. RULE 809.21

In the four cases underlying these consolidated appeals, Hicks pled no contest to one misdemeanor and several felonies, including armed robbery, burglary, first-degree reckless injury, and substantial battery. The court imposed concurrent sentences, with a controlling sentence of fifteen years of initial confinement and ten years of extended supervision on the armed robbery count.

The no-merit report addresses whether Hicks' pleas were entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charges, the rights Hicks was waiving, and other matters. The records show no other ground to withdraw the pleas. There is no arguable merit to this issue.

In Hicks' response to the no-merit report, he argues that the evidence was insufficient to support one of the elements of the first-degree reckless injury charge. That offense requires, among other elements, that the defendant's conduct caused "great bodily harm." WIS. STAT. § 940.23(1)(a). Hicks argues that the definition of that term provided in WIS. STAT. § 939.22(14) requires that the victim faced a substantial risk of death and that the victim here did not.

Hicks misreads the statute. Substantial risk of death is only one of several circumstances that meet the definition of "great bodily harm." As a result, it is not necessary for the State to establish a substantial risk of death in every charge of first-degree reckless injury. Instead, in

this case, the definition’s language regarding “other serious bodily injury” is applicable. The complaint alleged that the victim said that, during the beating, her vision went “in and out” and that months later she told a doctor that since the beating she had experienced consistent daily headaches. The victim also told police she could still feel the depressions in her head from the beating. In light of these allegations, it is frivolous to argue that there was not a sufficient factual basis for the no-contest plea on this charge.

The no-merit report addresses Hicks’ sentences. The sentences are within the legal maximums. As to discretionary issues, 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.

In Hicks’ response to the no-merit report, he raises two sentence-credit issues. First, he argues that he should receive credit for the day of sentencing. This argument is frivolous because, as explained in counsel’s supplemental no-merit report, the day of sentencing is considered to be the first day of the imposed sentences, rather than as presentence custody.

Second, Hicks questions whether he is entitled to significantly more credit than the 573 days that were granted. His question is based on a comment by the sentencing court. After summarizing the history of these cases and also of an unrelated case in which Hicks was serving a sentence at that time, the court stated that “it would appear that he has probably consumed some 800-some days of credit, plus or minus.”

In context, we understand the court to have been suggesting that the total time between Hicks' arrest in these cases and the sentencing date was approximately 800 days. However, the court was also aware that some of that period was time that Hicks was serving the sentences in the unrelated case. The court was not suggesting that Hicks might be entitled to "800-some" days of credit in the cases for which Hicks was being sentenced on that day.

Our review of the records discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney George Tauscheck is relieved of further representation of Hicks 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