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DISTRICT II

October 11, 2023

To:

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Circuit Court Judge
Electronic Notice

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Terrence D. Leflore, #689997
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You are hereby notified that the Court has entered the following opinion and order:

2022AP305-CRNM State of Wisconsin v. Terrence D. Leflore (L.C. # 2018CF463)

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).

Terrence D. Leflore appeals from a judgment, entered following his guilty pleas, of attempted first-degree intentional homicide with use of a dangerous weapon, first-degree sexual assault (causing great bodily harm), and attempted armed robbery, all charges with the repeater enhancer. He also appeals from an order denying his motion for plea withdrawal. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)[1] and ***Anders v.***

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

California, 386 U.S. 738 (1967). Leflore responded, and his appellate counsel filed a supplemental no-merit report. Upon consideration of the reports, Leflore's response, and an independent review of the Record, we conclude that the judgment and order may be summarily affirmed because there are no issues with arguable merit for appeal. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, on August 28, 2018, at approximately 10:00 p.m., police responded to a report of an unresponsive female. When police arrived, the victim, Sarah,[2] remained unresponsive. Her face was covered with blood and badly swollen, she had lacerations above her eye and on her lip, her shirt was covered in blood and vomit, and she was not wearing any pants, socks, or shoes. Officers observed blood spattered on her vehicle's door and backseat, and additional blood was found in the trunk area of her vehicle. Sarah's aunt advised police that when Sarah did not arrive home from work shortly after 9:00 p.m. like she normally did, her aunt became worried and drove to Sarah's work to check on her. When her aunt arrived, she observed a male run away from Sarah's vehicle. Sarah was transported to the hospital for emergency medical treatment.

Medical staff advised police that Sarah had a skull fracture, her brain was swelling, and "a large portion of [Sarah's] skull was removed during surgery to relieve pressure on [Sarah's] brain." Medical staff also advised that Sarah was suffering from injuries to the inside of her vagina and rectum.

[2] Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use a pseudonym when referring to the victim in this case.

Officers searched the parking lot and found a hammer in some brush that appeared to have hairs stuck to it. A detective spoke with the manager of the carnival ride company that was in town for the county fair. The carnival manager advised the detective that his crew had about fifty hammers similar to the one recovered near the parking lot.

Almost one week later, when Sarah was conscious and no longer intubated, she reported that on August 28, she finished work at 9:00 p.m. and walked to her vehicle. While walking to her vehicle, a male, who she did not know, was sitting on the sidewalk and said "Hi" to her. Sarah did not respond and continued to walk quickly toward her car. The male said "Hi" again, and she began running toward her car. Sarah got to her car and got inside. The next thing she remembered was waking up at the hospital.

Detectives spoke to Leflore, who worked for the carnival ride company. At first, Leflore denied being involved; however, he eventually admitted to attacking Sarah. Leflore told the detective that he had looked up the closing time of the business where Sarah worked. Leflore did not plan on killing Sarah but planned on taking money from her. When Sarah came out of the business, he followed her to the parking lot. When she got to her car, he hit her with a hammer[3] to get her to drop her purse. After he hit her, she fell to the ground. Sarah did not have much money on her. Leflore took Sarah's clothes off because he wanted to make it look like a rape. Leflore then "used the handle of the hammer to penetrate [Sarah's] vagina and anus." Leflore took Sarah's cell phone and a shirt from inside her vehicle.

[3] The hammer was used as an exhibit at sentencing. The State explained "this hammer is a large hammer and consistent with the hammers used by people working at the carnival … to put rides together, to drive metal pins through the rides to keep them secure." Leflore's attorney conceded it was not a normal hammer but "a heavy hammer" that had "heft" to it. The circuit court observed the hammer "is incredibly heavy."

When searching Leflore's property, police found a black shirt with a business logo that was consistent with a shirt described by Sarah as being inside her vehicle on the night of the attack. Additionally, Leflore's cell phone records showed that shortly after the attack, Leflore searched on his cell phone: "how can you tell if someone raped someone else" and "fingerprints and blood." The complaint alleged Leflore had a prior Mississippi conviction from 2015 and had been sentenced to prison.

The State charged Leflore with attempted first-degree intentional homicide with use of a dangerous weapon, first-degree sexual assault (causing great bodily harm), first-degree sexual assault (with use of a dangerous weapon), armed robbery, aggravated battery with use of a dangerous weapon, first-degree reckless injury with use of a dangerous weapon, and obstructing an officer—all charges with the repeater enhancer.

Leflore moved to suppress statements he made to police on the basis that his confession was involuntary. The circuit court listened to the interview recording and the detective testified. The court found that the police did not engage in coercive conduct, the detective confronted Leflore with actual evidence, including the shirt that was found in his possession and the cell phone searches, and Leflore confessed. The circuit court denied the suppression motion.

In exchange for Leflore's guilty pleas to attempted first-degree intentional homicide with use of a dangerous weapon as a repeater, first-degree sexual assault causing great bodily harm as a repeater, and an amended charge of *attempted* armed robbery as a repeater, the State agreed to dismiss and read in the remaining charges. Both sides would be free to argue at sentencing.

At sentencing, the State argued Leflore should be sentenced to the maximum. Leflore proposed a sentence of ten to fifteen years' initial confinement "followed by about as much

supervision as this court can offer." The circuit court sentenced Leflore to the maximum. He received a cumulative sentence of one-hundred fifteen years and six months' initial confinement and forty-seven years and six months' extended supervision.[4]

Following sentencing, Leflore moved to withdraw his guilty plea to the attempted first-degree intentional homicide count. Specifically, Leflore argued he was incorrectly advised as to the intent element of that crime and there was no factual basis for his plea. The State responded that the record established the pattern jury instruction was used to inform Leflore of the intent element of attempted first-degree intentional homicide. The State also argued that Leflore admitted the allegations in the complaint were true and the complaint provided a factual basis for the attempted first-degree intentional homicide count. In a written decision, the circuit court denied the motion without a hearing. This no-merit appeal follows.

The no-merit report addresses potential issues of whether the circuit court erred by denying Leflore's motion to withdraw his plea to the attempted first-degree intentional homicide count, whether Leflore's pleas were knowingly, voluntarily, and intelligently entered, and whether the circuit court properly exercised its discretion at sentencing. Leflore filed a response, generally challenging the factual basis underlying each count to which he pled guilty. Appointed counsel filed a supplemental response, addressing Leflore's concerns. We include additional facts below.

[4] On the attempted first-degree intentional homicide count, the circuit court sentenced Leflore to fifty-one years' initial confinement and twenty years' extended supervision. On the first-degree sexual assault count, the circuit court sentenced Leflore to forty-six years' initial confinement and twenty years' extended supervision. On the attempted armed robbery count, the circuit court sentenced Leflore to eighteen years and six months' initial confinement and seven years and six months' extended supervision. All sentences were imposed consecutive to each other.

We first consider whether there is any arguable merit to challenge the circuit court's denial of Leflore's plea withdrawal motion on the attempted first-degree intentional homicide count. A defendant who seeks to withdraw a guilty plea after sentencing "carries the heavy burden of establishing, by clear and convincing evidence, that the [circuit] court should permit the defendant to withdraw the plea to correct a 'manifest injustice.'" ***State v. Thomas***, 2000 WI 13, ¶16, 232 Wis. 2d 714, 605 N.W.2d 836. The failure to establish a sufficient factual basis for a guilty plea is one type of manifest injustice that justifies plea withdrawal. ***State v. Johnson***, 207 Wis. 2d 239, 244, 558 N.W.2d 375 (1997). In reviewing a defendant's plea withdrawal motion on this basis a court may look to the "totality of the circumstances," including the plea and sentencing records. ***Thomas***, 232 Wis. 2d 714, ¶18. The circuit court's decision to deny a motion for plea withdrawal is discretionary and will not be upset unless there was an erroneous exercise of discretion. ***Johnson***, 207 Wis. 2d at 244.

Our review of the circuit court's written decision as well as the record persuades us that there is no arguable merit to a claim that the circuit court erroneously exercised its discretion by denying Leflore's motion for plea withdrawal. First, the record establishes that on multiple occasions, Leflore was informed of the elements of attempted first-degree intentional homicide. His attorney advised the court that she reviewed the elements with Leflore and attached them to the plea questionnaire/waiver of rights form. Leflore agreed he went over the elements with his attorney; he also signed the elements form. The circuit court subsequently explained the elements to Leflore and Leflore agreed that he understood the State needed to prove both that: (1) he intended to kill Sarah, meaning, for this case, that he was aware his conduct was practically certain to cause Sarah's death; and (2) that Leflore did "an act towards the commission of that crime which shows unequivocally, in other words, basically absolutely that

under all of the circumstances that [he] had formed that intent or state of mind and would commit the crime except for the intervention of another person or some other extraneous factor." *See* WIS JI—CRIMINAL 1070 at 1-2 (2001). The circuit court as well as the elements form attached to the plea questionnaire accurately advised Leflore of the elements for attempted first-degree intentional homicide. There is no arguable merit to a claim that Leflore did not understand the elements of attempted first-degree intentional homicide.

Second, and as for the factual basis supporting Leflore's guilty plea, in his response to the no-merit report, Leflore contends his conviction for attempted first-degree intentional homicide should be vacated because he did not have specific intent to kill Sarah. He says that "Just because I hit someone in the head with a blunt one time does not mean I tried to kill them[.]" He says "I never took the necessary steps to commit an intentional homicide. Just because damage was inflicted no desire to kill was wanted. I pled guilty to hitting the victim, not trying to kill the victim." He also contends that "What they don't re[ali]ze is after the first hit, I threw the weapon somewhere, so the possibility of another hit no longer exists."

Despite Leflore's current assertions, the record establishes a factual basis supporting Leflore's conviction. Leflore specifically advised the court that he read the criminal complaint and the allegations in the criminal complaint were true. The complaint stated, in part, that Leflore, using a hammer, struck Sarah with such force on her head to fracture her skull, which required surgery to remove a "large portion" of her skull to relieve pressure from her swelling brain. The circumstances surrounding Leflore's use of the hammer, including his prior planning of the attack; isolating Sarah before attacking her; his desire and actions to make his attack look like something else; and his indifference to Sarah's condition after he attacked her, as seen in opening her car, taking her clothes off, and using the hammer to penetrate her vagina and anus

all demonstrate Leflore's awareness at the time of his conduct, the severity of the attack, and the practical certainty of her death. *See* ***State v. Wells***, 51 Wis. 2d 477, 484-85, 187 N.W.2d 328 (1971) (holding that intent to kill may be inferred from the circumstances surrounding the act). We agree with appointed counsel that given the record in this case there is no arguable merit to a claim that the circuit court erroneously exercised its discretion by denying the plea withdrawal motion for lack of a factual basis.

As to Leflore's first-degree sexual assault and attempted armed robbery convictions, in his response to the no-merit report, Leflore denies the factual basis underlying these counts. He argues he "didn't stick anything inside the victim. Nor did I cause great bodily harm inside the victim." He contends that "suppose[d]ly a y-strain was found. They said it's DNA but never said what kind of DNA it was." He also argues he never took anything from Sarah and did not have or use a weapon to rob someone.

We agree with appointed counsel that there is no arguable merit to a claim of plea withdrawal of these counts based on a lack of factual basis. As to the first-degree sexual assault conviction, Leflore admitted to police that he used the handle of the hammer to penetrate Sarah's vagina and anus. He then explicitly admitted to the court that he used the handle of the hammer to contact Sarah's vagina. Further, the fact that Leflore's DNA was found on Sarah's "intimate parts" [5] does not matter because the State established a factual basis for the first-degree sexual assault charge through Leflore's explicit admissions that he used a hammer to penetrate Sarah's

[5] At sentencing, the State advised the court "We know that the defendant says that the, the injuries to intimate parts were done with the hammer, but we also know that the defendant's Y-STR profile was located on the intimate parts of the victim."

vagina. As to the attempted armed robbery conviction, the record in this case establishes that Leflore admitted to police that he took Sarah's cell phone and a shirt from her vehicle. He also planned to take money from her after he hit her with the hammer. There is no arguable merit to move for plea withdrawal because these counts lacked a factual basis.

We next agree with counsel's analysis and conclusion that any further challenge to the validity of Leflore's pleas would lack arguable merit. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Our review of the record and of counsel's analysis in the no-merit report satisfies us that the circuit court complied with its obligations for taking Leflore's pleas. *See* WIS. STAT. § 971.08; ***Bangert***, 131 Wis. 2d at 261-62; ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.

With regard to the circuit court's sentencing discretion, our review of the record confirms that the circuit court appropriately considered the relevant sentencing objectives and factors, observing particularly that Leflore assaulted Sarah for almost an hour, was only stopped by her family, and "these are horrible, unspeakable crimes, some of the worst I've ever seen." *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695; ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Although the resulting sentence was the maximum authorized by law, given the record before the circuit court, Leflore's sentence was not "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel there would be no arguable merit to a challenge to the court's sentencing discretion.

Our independent review of the record prompts us to address one other matter. Prior to pleading guilty, Leflore moved to suppress the statements he made to police on the basis that they were involuntary. *See* WIS. STAT. § 971.31(10).[6] To be admissible, a defendant's statements must be voluntary. *See* ***State v. Davis***, 2008 WI 71, ¶35, 310 Wis. 2d 583, 751 N.W.2d 332. Statements are voluntary if they are "the product of a free and unconstrained will, reflecting deliberateness of choice[.]" *See* ***id.***, ¶36 (citation omitted). If law enforcement does not use coercion or other improper conduct to secure a statement, the statement is deemed voluntary. ***Id.*** Whether a statement is voluntary is a question of constitutional fact. ***State v. Jerrell C.J.***, 2005 WI 105, ¶16, 283 Wis. 2d 145, 699 N.W.2d 110.

Here, the circuit court listened to the recording from Leflore's interview and the detective testified. The court found that, during the interview, Leflore appeared to be of average intelligence and not impaired by alcohol or controlled substances. Although the interview was conducted at 1:20 a.m., the court stated it "could not tell that he had been asleep or was sleepy. He was responsive. Every answer he gave in context, appropriate to the questions given to him." The court also found that the detective did not engage in coercive conduct during the interview. The interview concluded around 1:40 a.m. The court observed that Leflore "was able to balance the pros and cons" and at first denied involvement in Sarah's attack. However, after the detective confronted Leflore with actual evidence, including Sarah's shirt that was found in Leflore's possession and Leflore's cell phone searches, Leflore "realized that the evidence was

[6] WISCONSIN STAT. § 971.31(10) provides: "An order denying a motion to suppress evidence or a motion challenging the admissibility of a statement of a defendant may be reviewed upon appeal from a final judgment or order notwithstanding the fact that the judgment or order was entered upon a plea of guilty or no contest to the information or criminal complaint."

overwhelming, [and] he kind of just gave up" and confessed. Applying the circuit court's factual findings to the legal standard for voluntariness, we conclude there is no arguable merit to challenge the circuit court's denial of Leflore's suppression motion.

Our independent review of the Record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment of conviction and the order denying his motion for plea withdrawal, and discharges appellate counsel of the obligation to represent Leflore further in this appeal.

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 Angela Dawn Chodak is relieved from further representing Terrence D. Leflore 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