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DISTRICT I

October 24, 2023

To:

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Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Andrea Taylor Cornwall
Electronic Notice

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Jamell L. Dent 673629
Milwaukee Secure Detention Facility
P.O. Box 05911
Milwaukee, WI 53205

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

2019AP2308-CRNM	State of Wisconsin v. Jamell L. Dent (L.C. # 2018CM1883)
2019AP2309-CRNM	State of Wisconsin v. Jamell L. Dent (L.C. # 2018CF728)
2019AP2310-CRNM	State of Wisconsin v. Jamell L. Dent (L.C. # 2018CF1230)

Before White, C.J., Dugan and Geenan, 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).

Jamell L. Dent appeals judgments, entered on his guilty pleas, convicting him on one misdemeanor count of criminal damage to property and two felony counts of battery by a prisoner. Appellate counsel has filed a no-merit report.¹ *See Anders v. California*, 386 U.S. 738

¹ The no merit report was filed by Attorney Chris M. Bailey, who has been replaced by Attorney Andrea Taylor Cornwall as Dent's appellate counsel.

(1967) WIS. STAT. RULE 809.32 (2019-20).² Dent was advised of his right to file a response, but he has not responded. Upon this court's independent review of the records, as mandated by *Anders*, and counsel's report, we conclude that there are no issues of arguable merit that could be pursued on appeal. We, therefore, summarily affirm the judgments.

Because of a prior delinquency adjudication, Dent was confined to the Vel R. Phillips Juvenile Justice Center. On November 7, 2017, Dent entered his pod's day room and started turning over tables before he threw a large plastic chair at Correctional Officer R.H., striking her head and causing a laceration that required six stitches. When Correctional Officer S.H. attempted to secure Dent, Dent also threw a chair at him. S.H. was able to deflect the furniture, but Dent then began punching him. On February 14, 2018, the State charged Dent in a criminal complaint with attempted battery by a prisoner, battery by a prisoner, and substantial battery.

On February 26, 2018, Dent and other inmates were in a classroom, seated at their desks. Dent suddenly got up from his desk and threw it across the room, striking inmate L.H. and breaking his nose. One officer entered the room as Dent was attempting to pick up another desk to throw at inmate T.U.; the officer was able to secure Dent before he could pick up the desk. Dent later told the officer he had hit L.H. on purpose because L.H. was going to warn T.U. that Dent was planning to attack T.U. On March 16, 2018, Dent was charged in a criminal complaint with one count of battery by a prisoner, one count of substantial battery, and one count of second-degree recklessly endangering safety.

² All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

On February 27, 2018, shortly after dinner service, Dent was alone in a cell when an officer heard a loud banging come from the cell. The officer investigated and found that the sprinkler head had been damaged and there was water flooding the cell. Further, the damage activated a fire alarm, causing a “major disturbance” in the children’s detention center and requiring the Wauwatosa Fire Department to respond. On May 16, 2018, the State charged Dent in a criminal complaint with criminal damage to property of less than \$2,500 damage and disorderly conduct.

Although Dent was sixteen at the time of the incidents, the nature of the charges gave original jurisdiction to the criminal court, rather than juvenile court. After determining there was sufficient probable cause for the charges, the circuit court conducted reverse waiver proceedings, but decided against sending the cases to juvenile court. Dent later agreed to plead guilty to the two battery charges and criminal damage to property, with the remaining charges in the three cases dismissed and read in. Dent was sentenced in December 2018. The circuit court imposed nine months in jail for the property damage. For each battery charge, the circuit court imposed concurrent sentences of five years’ imprisonment, which it stayed for concurrent terms of four years’ probation. Dent appeals.

Reverse Waiver

One of the issues appellate counsel discusses in the no-merit report is whether the circuit court “properly rule[d] on the reverse waiver[.]” Reverse waiver is the procedure by which an adult court transfers a case against a juvenile offender to juvenile court. *See State v. Toliver*, 2014 WI 85, ¶18 n.7, 356 Wis. 2d 642, 851 N.W.2d 251.

Courts of criminal jurisdiction have exclusive jurisdiction over a juvenile who has been adjudicated delinquent and who is alleged to have committed battery by a prisoner.³ See WIS. STAT. §§ 938.183(1)(a), 940.20(1). If the circuit court finds probable cause under WIS. STAT. § 970.032(1), the juvenile is entitled to a reverse waiver hearing. See *State v. Kleser*, 2010 WI 88, ¶7, 328 Wis. 2d 42, 786 N.W.2d 144. At the reverse waiver hearing, the criminal court shall retain jurisdiction unless the juvenile shows, by a preponderance of the evidence, that: if convicted, the juvenile could not receive adequate treatment in the criminal justice system; transferring jurisdiction to the juvenile court would not depreciate the seriousness of the offense; and retaining jurisdiction is not necessary to deter the juvenile or other juveniles from committing the violation of which the juvenile is accused. See WIS. STAT. § 970.032(2)(a)-(c); *Kleser*, 328 Wis. 2d 42, ¶7. If the juvenile meets this burden, the decision whether to transfer the juvenile to juvenile court is a matter of circuit court discretion. See *Kleser*, 328 Wis. 2d 42 at ¶37. The circuit court’s evidentiary determinations are also reviewed for a proper exercise of discretion. See *id.*, ¶38.

Our review of the record satisfies us that the circuit court properly declined to grant reverse waiver. In particular, the circuit court was unconvinced that transferring jurisdiction to juvenile court would not depreciate the seriousness of the offense. While acknowledging that the statutory felony classification of battery by a prisoner “is less serious than homicide for first-degree sexual assault or armed robbery,” the circuit court nevertheless found that the battery is

³ The criminal court also has original jurisdiction over a “juvenile specified in [WIS. STAT. § 938.183(1)(a)] who is alleged to have attempted or committed a violation of any state criminal law in addition to the violation alleged under par. (a) ... if the violation alleged under this paragraph and the violation alleged under par. (a) ... may be joined under [WIS. STAT. §] 971.12(1).” Sec. 938.183(1)(ar).

“still a serious felony that qualifies for adult jurisdiction.” The circuit court commented that it considered “serious” to refer not just to the offense’s classification, but also to the factors of the offense themselves. Here, the circuit court noted the unpredictability of Dent’s behavior, and the severity of the injury to Officer R.H. and her “vulnerability in that confined setting.” The circuit court further commented that the other battery was “extremely aggravated” because of Dent’s “complicated intent” and although Dent had only broken L.H.’s nose, if the desk had instead “hit him squarely in the head, he would probably be dead” and the case would be a homicide.

Because a juvenile must satisfactorily demonstrate all three prongs of WIS. STAT. § 970.032(2) to even be considered for reverse waiver, failure to meet the burden to any one of them requires the circuit court to retain jurisdiction. Accordingly, there is no arguable merit to challenging the circuit court’s decision on reverse waiver.⁴

Plea Agreement

Counsel discusses whether Dent’s pleas were “knowingly and voluntarily entered.” Our review of the record—including the plea questionnaire and waiver of rights forms and plea

⁴ A decision on reverse waiver should ordinarily be challenged by interlocutory appeal. See *State v. Dominic E.W.*, 218 Wis. 2d 52, 54 n.2, 579 N.W.2d 282 (Ct. App. 1998). A valid guilty plea also waives any challenge to a waiver decision. See *State v. Villegas*, 2018 WI App 9, ¶45, 380 Wis. 2d 246, 908 N.W.2d 198; *State v. Kraemer*, 156 Wis. 2d 761, 764-65, 457 N.W.2d 562 (Ct. App. 1990). Because this appeal is a no-merit appeal, however, we have considered whether there are any arguably meritorious claims of ineffective assistance of counsel, such as a claim against trial counsel for not pursuing an interlocutory appeal or against postconviction counsel for failing to preserve claims against trial counsel. See *State ex rel. Panama v. Hepp*, 2008 WI App 146, ¶27, 314 Wis. 2d 112, 758 N.W.2d 806 (discussing the raising of unpreserved issues in the context of a no-merit appeal).

However, because there is no arguable merit to challenging the circuit court’s decision denying reverse waiver, there are no arguably meritorious issues associated with ineffective assistance claims: “an attorney’s failure to pursue a meritless motion does not constitute deficient performance.” *State v. Cummings*, 199 Wis. 2d 721, 747 n.10, 546 N.W.2d 406 (1996).

hearing transcript—confirms that the circuit court complied with its obligations for taking a guilty plea, pursuant to WIS. STAT. § 971.08, *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and subsequent cases, as collected in *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. There is no arguable merit to a claim that Dent’s pleas were anything other than knowing, intelligent, and voluntary.

Sentencing Discretion

Appellate counsel also discusses whether “the sentence imposed [was] an abuse of discretion.” See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and determine which objective or objectives are of greatest importance, see *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court should consider the primary factors including the gravity of the offense, the character of the offender, and the protection of the public, and may consider other factors. See *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the circuit court’s discretion. See *id.*

Our review of the record confirms that the court appropriately considered relevant sentencing objectives and factors. The nine months of imprisonment, plus concurrent terms of five years’ imprisonment that were imposed and stayed for concurrent terms of four years’ probation, are well within the nearly thirteen-year range of imprisonment authorized by law, see *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and the sentences are not so excessive so as to shock the public’s sentiment, see *Ocanas v. State*, 70 Wis. 2d 179, 185,

233 N.W.2d 457 (1975). There would be no arguable merit to a challenge to the court's sentencing discretion.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21 (2021-22).

IT IS FURTHER ORDERED that Attorney Andrea Taylor Cornwall is relieved of further representation of Dent in these matters. *See* WIS. STAT. RULE 809.32(3) (2021-22).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals