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DISTRICT II

December 20, 2023

To:

Hon. Jennifer Dorow
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Marcella De Peters
Electronic Notice

Nicholas DeSantis
Electronic Notice

Terrence T. Lafaive #594257
Stanley Correctional Inst.
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Stanley, WI 54768

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

2022AP391-CRNM	State of Wisconsin v. Terrence T. Lafaive (L.C. #2020CF138)
2022AP392-CRNM	State of Wisconsin v. Terrence T. Lafaive (L.C. #2020CF141)

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).

In these consolidated matters, Terrence T. Lafaive appeals from judgments convicting him of possession of narcotic drugs as a second and subsequent offense and delivery of a non-narcotic drug as a second and subsequent offense. His appellate counsel, Marcella De Peters, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Lafaive filed a response and a supplemental response raising a number of

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

claims. Upon this court's independent review of the records as mandated by *Anders*, counsel's no-merit report, and Lafaive's responses, we conclude there are no arguably meritorious issues that could be pursued on appeal. We, therefore, summarily affirm the judgments of conviction.

Lafaive was charged with a total of five drug-related offenses in the two underlying cases. He ultimately waived his right to a speedy trial and informed the court that he wished to enter pleas. At the combined plea hearing, the State described the parties' agreement as follows. In Waukesha County Case No. 2020CF138, Lafaive would plead guilty to possession of narcotic drugs as a second and subsequent offense. In Waukesha County Case No. 2020CF141, Lafaive would plead guilty to one count of delivery of a non-narcotic drug as a second and subsequent offense, and the State would dismiss and read-in the other charges. As recited by the State, the agreement left both parties free to argue as to Lafaive's sentences.

During the plea colloquy, however, Lafaive's trial counsel noted that the written explanation of the plea negotiations that was attached to the plea questionnaire and waiver of rights form differed from the State's description. The written explanation provided that for the charge in Case No. 2020CF138, the State would recommend an unspecified period of time in prison, consecutive to any other sentence, and in Case No. 2020CF141, the State would recommend a three-year probation term. The State clarified that its understanding was that the negotiations left the parties free to argue as to the sentences on both charges. Lafaive's trial counsel stated that this was different than what he had discussed with Lafaive.

In response to this information, the circuit court passed the case to allow Lafaive to speak with trial counsel. When the hearing resumed, Lafaive expressed frustration about miscommunication relating to the plea negotiations and about the waiver of his right to a speedy

trial. Lafaive indicated that he wanted to fire trial counsel and noted his interest in “potentially taking a plea.” The court calendared the case for a plea and sentencing hearing but explained that trial counsel would meet with Lafaive to discuss how he wished to proceed. The court explained that if Lafaive wanted a new attorney or a trial date, trial counsel needed to advise the court accordingly.

At the next hearing, Lafaive informed the circuit court that he wished to represent himself and to proceed to plea and sentencing. Following a colloquy reflecting a valid waiver of counsel, the court allowed Lafaive to proceed *pro se*. The plea negotiations were the same as had been stated on the record by the State at the prior hearing with both parties free to argue as to Lafaive’s sentences.

The circuit court accepted Lafaive’s pleas. At a combined sentencing hearing, in Case No. 2020CF141, the circuit court sentenced Lafaive to three years of initial confinement and three years of extended supervision, consecutive to any other sentence he was serving. In Case No. 2020CF138, the circuit court imposed and stayed a sentence of three years of initial confinement and two years of extended supervision and placed Lafaive on probation for two years, consecutive to the sentence in Case No. 2020CF141. These no-merit appeals follow.

The no-merit report addresses the potential issues of whether Lafaive’s pleas were valid and whether the circuit court properly exercised its discretion during sentencing. The plea colloquies 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 Lafaive was waiving, and other matters. The records show no other ground to withdraw the pleas. Consequently, the pleas were valid and operated to waive all nonjurisdictional defects

and defenses, including constitutional claims. *See State v. Kelty*, 2006 WI 101, ¶¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886.

The no-merit report also addresses Lafaive's 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 reasonable results. There is no arguable merit to this issue.

The no-merit report additionally discusses whether Lafaive could pursue a claim for a violation of his constitutional right to a speedy trial and whether the circuit court properly granted Lafaive's request to represent himself. We agree with counsel's assessment that there is no arguable basis to pursue these claims.

Lafaive raises a number of issues in his response. He contends that the circuit court's refusal to recalendar his speedy trial, when combined with self-incriminating statements he made at the first plea hearing and the revocation summaries provided to the circuit court, left him with no choice but to proceed with his guilty pleas without counsel.

Insofar as this is a claim by Lafaive that he was denied a speedy trial, it is subject to the guilty plea waiver rule. *See Foster v. State*, 70 Wis. 2d 12, 19-20, 233 N.W.2d 411 (1975) (holding that a guilty plea waives the claim that the defendant was denied a speedy trial). As for Lafaive's contention that he felt he had no choice but to enter guilty pleas and waive his right to counsel, there is no indication that Lafaive's agreement during the first plea hearing to the facts as laid out in the criminal complaints would have been used against him in a subsequent trial. If

Lafaive wished to consult with a new attorney, the court made clear he had the right to do so. The court also made clear that Lafaive had the right to a trial date following the miscommunication that occurred at the first plea hearing. The court explained that all trial counsel needed to do was send a letter to this effect. If it turned out that Lafaive wanted a trial, the court said it would provide a date within thirty days of the request. Rather than obtain new counsel, Lafaive opted to represent himself and enter guilty pleas at the next hearing.

Lafaive’s claim that the circuit court improperly relied on his revocation summaries at sentencing also lacks arguable merit. “The [circuit] court considers a variety of factors because it has a responsibility ‘to acquire full knowledge of the character and behavior pattern of the convicted defendant before imposing sentence.’” *State v. Salas Gayton*, 2016 WI 58, ¶23, 370 Wis. 2d 264, 882 N.W.2d 459 (citation omitted). Indeed, the “scope of the information that a court may consider includes ‘not only uncharged and unproven offenses’ but also facts related to offenses for which the defendant has been acquitted.” *Id.* (citation omitted). Here, it was not improper for the circuit court to have reviewed or referenced information in Lafaive’s revocation summaries.²

Our independent review of the record discloses no other potential issue for appeal.

Therefore,

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

² To the extent that there are other issues in Lafaive’s responses that are not specifically addressed in this opinion, they are deemed to lack sufficient arguable merit to warrant individual attention. *See Libertarian Party of Wis. v. State*, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996).

IT IS FURTHER ORDERED that Attorney Marcella De Peters is relieved from further representing Lafaiwe in these appeals. *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