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DISTRICT III

December 28, 2023

To:

Hon. Jane M. Sequin
Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Sheila Dudka
Clerk of Circuit Court
Marinette County Courthouse
Electronic Notice

Jesse James Stoneburner 706333
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

Thomas J. Erickson
Electronic Notice

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

2022AP942-CRNM State of Wisconsin v. Jesse James Stoneburner
(L. C. No. 2021CF61)

Before Stark, P.J., Hruz and Gill, 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).

Jesse James Stoneburner appeals a judgment convicting him of first-degree recklessly endangering safety. Appellate counsel Thomas J. Erickson filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),¹ and *Anders v. California*, 386 U.S. 738 (1967). Stoneburner received a copy of the report, was advised of his right to file a response, and he has responded. Counsel filed a supplemental no-merit report. We have independently reviewed the record, the no-merit report, the response, and the supplemental report, as mandated by *Anders*.

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

We conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm. *See* WIS. STAT. RULE 809.21.

The State charged Stoneburner with first-degree recklessly endangering safety; pointing a firearm at another person; possession of a firearm while intoxicated; disorderly conduct as an act of domestic abuse; and possession of THC, as a second offense and as a party to a crime. The charges stemmed from an incident that took place on February 18, 2021, in which Stoneburner fired gunshots inside his residence, pointed a gun at his girlfriend, and ran from police. According to the complaint, Stoneburner’s girlfriend told police that Stoneburner had been in the hospital earlier that day for a seizure related to alcohol poisoning and had been hallucinating.

Stoneburner ultimately pled no contest to one count of first-degree recklessly endangering safety. The remaining charges were dismissed and read in. The circuit court conducted a plea colloquy with Stoneburner and accepted his no-contest plea. The court sentenced Stoneburner to two years of initial confinement followed by three years of extended supervision. This no-merit appeal follows.

Appellate counsel’s no-merit report addresses two issues: (1) whether Stoneburner’s no-contest plea was knowingly, voluntarily and intelligently made; and (2) whether the court erroneously exercised its sentencing discretion.

As to the first issue, our review of the record—including the plea questionnaire/waiver of rights form with an attached document listing the elements of the offense, and the plea hearing transcript—confirms that the circuit court complied with its obligations in taking a no-contest plea, pursuant to WIS. STAT. § 971.08, *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. These

obligations exist specifically to help ensure the validity of any plea. We thus agree with appellate counsel's conclusion that there is no arguable merit to Stoneburner seeking plea withdrawal based on a claim that his plea was anything other than knowing, intelligent, and voluntary.

With regard to the circuit court's sentencing decision, we note that sentencing is a matter for the court's discretion. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court should 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. It should also determine which objectives are of greatest importance. *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court must consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, as well as additional factors it may wish to consider. *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 court's discretion. *Id.*

The record reveals that the circuit court considered and applied the relevant sentencing factors, focusing specifically on risks posed by Stoneburner's conduct. The resulting sentence was within the potential maximum authorized by law, see *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is 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). Therefore, a challenge to the court's sentencing discretion would lack arguable merit.

In his response, Stoneburner argues that “no one brought up the many pages” of medical records that confirm on the day of the incident he was suffering from “severe Alcohol Withdrawal Syndrome with Delirium” and that he has no memory of what occurred on February 18, 2021. Although no medical records were introduced to the circuit court, Stoneburner contends that his medical records would provide merit to an appeal. We disagree.

At the sentencing hearing, Stoneburner told the circuit court that he had no memory of the incident. Stoneburner’s trial counsel also told the court that Stoneburner was in a state of delirium and had a seizure as a result of alcohol detoxification. In short, the court was aware of Stoneburner’s medical condition at the time of the incident. Counsel’s supplemental no-merit report further explains why Stoneburner’s argument does not provide an issue of merit for appeal. We agree with counsel’s analysis.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Thomas J. Erickson is relieved of further representation of Jesse James Stoneburner in this case pursuant to 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