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DISTRICT I

January 30, 2024

To:

Hon. Michelle Ackerman Havas
Circuit Court Judge
Electronic Notice

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

Christopher D. Sobic
Electronic Notice

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Travis E. Stackhouse 606141
Stanley Correctional Inst.
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Stanley, WI 54768

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

2023AP1136-CRNM State of Wisconsin v. Travis E. Stackhouse (L.C. # 2019CF2782)

Before Donald, P.J., Geenen and Colón, 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).

Travis E. Stackhouse appeals a judgment of conviction entered after he pled guilty to second-degree reckless homicide, child neglect resulting in bodily harm, and physically abusing a child with the intent to cause bodily harm to the child. Stackhouse's appellate counsel, Attorney Christopher D. Sobic, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).[1] Stackhouse did not file a response.

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

Upon consideration of the no-merit report and an independent review of the record as mandated by ***Anders***, we conclude that no arguably meritorious issues exist for an appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

The State alleged in a criminal complaint that police and firefighters responded to Stackhouse's Milwaukee residence in the early morning hours of June 22, 2019, following a 911 call regarding a sick or injured child. The first responders found S.S., Stackhouse's five-year-old son, deceased in the home. Stackhouse told an investigating officer at the scene that S.S. had fallen down the stairs at some point during the previous evening. In a subsequent recorded custodial interview, Stackhouse admitted to detectives that he had punched S.S. in the stomach and struck him in the face. Dr. P. Douglas Kelley, the Milwaukee County Deputy Medical Examiner, conducted an autopsy and determined that S.S. had a ruptured stomach, a bruised kidney, and a torn adrenal gland. Dr. Kelley concluded that S.S.'s death was caused by blunt force trauma to the abdomen and that the death was a homicide. The State charged Stackhouse with first-degree reckless homicide.

Stackhouse moved to suppress his custodial statement, but the circuit court denied the motion. Stackhouse then decided to proceed to trial. Shortly before the jury trial began, the State filed an amended information that included both the original charge of first-degree reckless homicide, which carries a maximum penalty of sixty years of imprisonment, and an additional charge of child neglect resulting in death, which carries a maximum penalty of a $100,000 fine and twenty-five years of imprisonment. *See* WIS. STAT. §§ 940.02(1), 948.21(2), (3)(a), 939.50(3)(b), (d) (2019-20).

While the trial was underway, Stackhouse and the State agreed to resolve the case with a plea agreement that involved charge concessions but no sentencing concessions. Pursuant to the agreement, Stackhouse pled guilty to amended charges of second-degree reckless homicide and to child neglect resulting in bodily harm. He also pled guilty to a third charge, physical abuse of a child with intent to cause bodily harm to the child. The circuit court accepted his guilty pleas.

The case proceeded to sentencing. Stackhouse's conviction for second-degree reckless homicide carried a maximum penalty of a $100,000 fine and a twenty-five-year term of imprisonment. *See* WIS. STAT. §§ 940.06(1), 939.50(3)(d) (2019-20). The circuit court imposed fifteen years of initial confinement and six years of extended supervision. Stackhouse's convictions for child neglect and for physical abuse of a child each carried a maximum penalty of a $10,000 fine and a six-year term of imprisonment. *See* WIS. STAT. §§ 948.21(2), (3)(d), 948.03(2)(b), 939.50(3)(h) (2019-20). On those convictions, the circuit court imposed three years of initial confinement and one year of extended supervision; and two years of initial confinement and one year of extended supervision, respectively. The circuit court ordered Stackhouse to serve the three sentences consecutively, resulting in an aggregate twenty-eight-year term of imprisonment bifurcated as twenty years of initial confinement and eight years of extended supervision. The circuit court also granted Stackhouse the 739 days of sentence credit that he requested, found him ineligible for both the challenge incarceration program and the Wisconsin substance abuse program, and imposed restitution in the amount of $5,000.

In the no-merit report, appellate counsel considers the potential issues of whether Stackhouse entered his guilty pleas knowingly, intelligently, and voluntarily, and whether the circuit court properly exercised its sentencing discretion. This court agrees with appellate

counsel's analysis of those matters and concludes that further pursuit of those issues would lack arguable merit. Additional discussion of those matters is not warranted.

Appellate counsel also examines whether Stackhouse could pursue a challenge to the order denying suppression of his custodial statement. As a rule, a defendant who enters a knowing, intelligent, and voluntary guilty plea gives up all nonjurisdictional challenges to the conviction. ***State v. Kelty***, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886. An exception to this rule is codified in WIS. STAT. § 971.31(10), which permits a defendant who has pled guilty to challenge an order denying a motion to suppress evidence. Appellate counsel's thorough analysis in the no-merit report fully sets forth why such a challenge here would lack arguable merit. We need not discuss the matter further.

Additional discussion is warranted regarding the circuit court's findings at sentencing that, based on both "the nature of the[] offenses and [the circuit court's] personal assessment," Stackhouse was ineligible for the challenge incarceration program and the Wisconsin substance abuse program. Both programs offer treatment to prison inmates and, upon successful completion of either program, an inmate's remaining initial confinement time is normally converted to time on extended supervision. *See* WIS. STAT. §§ 302.045(3m)(b), 302.05(3)(c)2. *But see* ***State v. Gramza***, 2020 WI App 81, ¶3, 395 Wis. 2d 215, 952 N.W.2d 836 (holding that an inmate must complete any mandatory minimum term of initial confinement before the person may benefit from an early release provision). Inmates are statutorily excluded from the programs while serving sentences for certain specified crimes. *See* §§ 302.045(2)(c), 302.05(3)(a)1. When imposing a bifurcated sentence for any crimes other than those subject to a statutory exclusion, the circuit court exercises its sentencing discretion to decide whether a person is eligible to participate in either or both programs while confined. WIS. STAT.

§ 973.01(3g)-(3m).[2] We will sustain the circuit court's determinations if they are supported by the record and the overall sentencing rationale. ***State v. Owens***, 2006 WI App 75, ¶9, 291 Wis. 2d 229, 713 N.W.2d 187.

Here, Stackhouse is statutorily excluded from both the challenge incarceration program and the Wisconsin substance abuse program while serving his sentences for second-degree reckless homicide and for physical abuse of a child. *See* WIS. STAT. §§ 302.045(2)(c), 302.05(3)(a)1. Further, the sentencing rationale supports the circuit court's findings that Stackhouse is ineligible for both programs while serving any period of initial confinement imposed in this case, regardless of whether he is statutorily qualified to participate. The circuit court explained that, given the gravity of Stackhouse's crimes and the need to protect the community, his time in initial confinement "needs to be very close to the maximum," and that the circuit court's "specific intent" was therefore that Stackhouse serve "a total of twenty years of initial confinement." The sentencing remarks thus support the circuit court's findings that Stackhouse is ineligible for programs that might lead to early release from confinement. A challenge to Stackhouse's ineligibility for either the challenge incarceration program or the

[2] The Wisconsin substance abuse program was formerly known as the earned release program. Effective August 3, 2011, the legislature renamed the program. *See* 2011 Wis. Act 38, § 19; WIS. STAT. § 991.11. The program is identified by both names in the current version of the Wisconsin Statutes. *See* WIS. STAT. §§ 302.05, 973.01(3g).

Wisconsin substance abuse program would therefore be frivolous within the meaning of ***Anders***.[3]

Last, we conclude that Stackhouse could not pursue an arguably meritorious challenge to the order that he pay restitution in the amount of $5,000. Stackhouse stipulated to restitution in that amount. *See* WIS. STAT. § 973.20(13)(c). A challenge to the restitution order therefore would be frivolous within the meaning of ***Anders***. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (holding that a defendant may not challenge on appeal a sentence that he or she affirmatively approved).

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

[3] The sentencing court clearly stated that "the defendant is not eligible for the challenge incarceration program, not eligible for the substance abuse program." However, the written judgment of conviction—which the clerk of circuit court signed pursuant to WIS. STAT. § 972.13(4)—contains checkmarks in preprinted boxes purportedly reflecting that the circuit court found Stackhouse eligible for both programs. "When an unambiguous oral pronouncement at sentencing conflicts with an equally unambiguous pronouncement in the judgment of conviction, the oral pronouncement controls." ***State v. Oglesby***, 2006 WI App 95, ¶16, 292 Wis. 2d 716, 715 N.W.2d 727. Accordingly, the judgment of conviction does not provide a basis for Stackhouse to pursue a claim that he is eligible for the programs. To the contrary, we conclude that the checkmarks reflecting Stackhouse's program eligibility are obvious clerical errors, which the circuit court may correct at any time to reflect the judgment that the circuit court actually pronounced. *See* ***State v. Schwind***, 2019 WI 48, ¶30 n.5, 386 Wis. 2d 526, 926 N.W.2d 742. Therefore, following remittitur, the circuit court shall oversee the entry of a corrected judgment of conviction that reflects Stackhouse's ineligibility for the challenge incarceration program and the Wisconsin substance abuse program. *See* ***State v. Prihoda***, 2000 WI 123, ¶5, 239 Wis. 2d 244, 618 N.W.2d 857 (providing that the circuit court may correct a clerical error in the sentence portion of a written judgment or direct the clerk's office to make the correction).

IT IS ORDERED that the judgment of conviction, corrected as discussed in footnote three, is summarily affirmed pursuant to WIS. STAT. RULE 809.21, and the case is remanded for entry of a corrected judgment of conviction.

IT IS FURTHER ORDERED that Attorney Christopher D. Sobic is relieved of any further representation of Travis E. Stackhouse. *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