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DISTRICT I

May 21, 2024

To:

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Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
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Lloyd Thomas Schuenke 177721
Dodge Correctional Inst.
P.O. Box 700
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1545-CRNM State of Wisconsin v. Lloyd Thomas Schuenke
(L.C. # 2021CM3710)

Before Geenen, J.[1]

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).

Lloyd Thomas Schuenke, a/k/a Lloyd Thomas Scheunke, appeals a judgment of conviction entered upon his guilty plea to disorderly conduct by use of a dangerous weapon as an act of domestic abuse. His appellate counsel, Attorney Pamela Moorshead, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Appellate counsel mailed a copy of the report to Schuenke, and he was advised by counsel and

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

by this court that he had a right to respond, but he did not file a response.[2] 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.

On November 7, 2021, police spoke to N.C. outside her home in a Milwaukee neighborhood. She reported that her live-in boyfriend, Schuenke, had threatened her with a knife and pushed her into a table. While police were on the scene, they saw Schuenke fleeing through N.C.'s yard. Officers seized him and took him into a custody. During a search of his person, police found a pocket knife. The State charged Schuenke with two misdemeanors.

Schuenke decided to resolve the two charges with a plea agreement. He pled guilty to disorderly conduct by use of a dangerous weapon as an act of domestic abuse. Upon conviction, he faced a maximum penalty of nine months in jail and a $1,000 fine, along with a mandatory $100 domestic abuse surcharge. WIS. STAT. §§ 947.01(1), 939.51(3)(b), 939.63(1)(a), 973.055(1). The State agreed to recommend a six-month jail sentence, imposed and stayed in favor of fifteen months of probation. The State also moved to dismiss and read in the remaining

[2] Appellate counsel filed the no-merit report on September 25, 2023, but subsequently advised this court's clerk that she did not have a valid address for Schuenke, and therefore, she had not successfully served him with a copy of the report. We determined from publicly available records that Schuenke was held in the Milwaukee County Jail and then transferred to Dodge Correctional Institution (DCI) in December 2023. Accordingly, we directed appellate counsel to send a copy of the no-merit report to Schuenke at DCI, and counsel confirmed on January 3, 2024, that she had done so. Online records of the Department of Corrections (DOC) reflect that in February 2024, Schuenke was released from DCI and fully discharged from DOC supervision. Neither he nor appellate counsel has provided us with his new address. We observe that it is Schuenke's responsibility to remain in contact with his appellate counsel and to cooperate with her so that she may advise him regarding his options under WIS. STAT. RULE 809.32(3). *See* ***McClelland v. State***, 84 Wis. 2d 145, 152-53, 267 N.W.2d 843 (1978).

charge of resisting an officer. The circuit court granted that motion, and the matter proceeded immediately to sentencing.

The State made the promised sentencing recommendation. Schuenke, by counsel, joined the State's request. In support of the joint recommendation, Schuenke explained that he was currently serving fourteen and one-half months in prison following revocation of his parole for a felony conviction from the 1990's. He therefore sought fifteen months of probation in the instant case that he would serve concurrently with the remainder of that revocation term and with the anticipated community supervision that would resume upon his release from confinement. Schuenke told the circuit court that, in both parties' view, an additional six months in jail "hanging over his head" would be sufficient punishment and provide that, in the event of another revocation of his supervision, he would serve the ten months remaining on his felony sentence "plus whatever imposed and stayed time that [the circuit court] impose[s] here."

The circuit court followed the joint sentencing recommendation. The circuit court imposed a six-month jail sentence consecutive to the sentence that Schuenke was already serving, and the circuit court stayed that sentence in favor of fifteen months of probation. The circuit court also imposed the mandatory domestic abuse surcharge and ordered Schuenke to pay $780.04 in restitution to N.C.

In the no-merit report, appellate counsel first examines whether Schuenke could pursue an arguably meritorious claim for plea withdrawal on the ground that his guilty plea was not entered knowingly, intelligently, and voluntarily. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). We agree with appellate counsel's conclusion that Schuenke could not pursue such a claim. The record shows that at the outset of the plea hearing, the circuit court

established that Schuenke had signed a plea questionnaire and waiver of rights form and addendum, that he had reviewed those documents with his trial counsel, and that he understood them. *See* ***State v. Hoppe***, 2009 WI 41, ¶32, 317 Wis. 2d 161, 765 N.W.2d 794 (providing that a completed plea questionnaire and waiver of rights form helps to ensure a knowing, intelligent, and voluntary plea). The circuit court went on to conduct a colloquy with Schuenke that satisfied the circuit court's obligations when accepting a plea other than not guilty. *See* ***id.***, ¶18; *see also* WIS. STAT. § 971.08. The record—including the plea questionnaire and waiver of rights form and addendum; the attached jury instructions that Schuenke initialed describing the elements of the crime to which he pled guilty; and the plea hearing transcript—demonstrates that Schuenke entered his guilty plea knowingly, intelligently, and voluntarily.[3] Pursuit of a challenge to the validity of Schuenke's guilty plea would lack arguable merit.

We also agree with appellate counsel that Schuenke could not mount an arguably meritorious claim for relief from his sentence. The circuit court imposed the sentence that Schuenke proposed, and therefore he cannot challenge it on appeal. ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989).

Moreover, the record shows that the circuit court properly exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The record reflects that the circuit court viewed Schuenke's rehabilitation as the primary sentencing

[3] The plea questionnaire mistakenly stated that Schuenke faced a maximum fine of $10,000 if convicted. However, the circuit court correctly explained on the record that Schuenke in fact faced a $1,000 maximum fine, and Schuenke confirmed that he understood. Any challenge to the plea based on the mistake on the plea questionnaire would therefore lack arguable merit. *See* ***State v. Brandt***, 226 Wis. 2d 610, 620-21, 594 N.W.2d 759 (1999) (reflecting that a mistake on the plea questionnaire does not provide a basis for postconviction relief when the circuit court provides the correct information during the plea colloquy and establishes the defendant's understanding of that information).

goal, and the circuit court discussed the factors that it viewed as relevant to achieving that goal. *See* ***id.***, ¶¶41-43. The circuit court's discussion included consideration of the mandatory sentencing factors, namely, "the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court then imposed and stayed a consecutive six-month jail sentence and placed Schuenke on probation for a fifteen-month term concurrent with his ongoing felony sentence.[4] The disposition in this case was well within the maximum sentence allowed by law and cannot reasonably be characterized as unduly harsh or unconscionable. ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. A challenge to the sentence would be frivolous within the meaning of ***Anders***.

Appellate counsel examines whether Schuenke could pursue an arguably meritorious claim that the circuit court impermissibly structured Schuenke's sentence by imposing a consecutive sentence and staying it in favor of concurrent probation. We agree with appellate counsel that such a claim would lack arguable merit. *See* WIS. STAT. § 973.09 (1)(a) (permitting the court to impose and stay a sentence and place a convicted person on probation); WIS. STAT. § 973.15(2)(a) (providing that a sentence may be concurrent with or consecutive to a sentence

[4] The circuit court did not use the words "consecutive" or "concurrent" when pronouncing Schuenke's sentence. Rather, the circuit court found the parties' recommendation to be "appropriate," and sentenced Schuenke "to six months in the House of Correction. That will be imposed and stayed. And I will place [Schuenke] on fifteen months of probation." Next, the circuit court ordered that Schuenke: "will have no sentence credit because [he is] serving that old situation. So if [he] gets revoked on this, it's going to be for six months in addition to whatever else that other case may provide for [him]." At the conclusion of the hearing, the circuit court advised Schuenke that he would be "hooked up with probation once [he] g[o]t back over to secure detention." Accordingly, the circuit court's meaning was clear, and the absence of the words "consecutive" and "concurrent" does not undo the imposition of a consecutive stayed sentence and concurrent probation that was clearly conveyed by the words that the circuit court did use. ***State v. Coles***, 208 Wis. 2d 328, 334-35, 559 N.W.2d 599 (Ct. App. 1997).

imposed at the same time or previously). As appellate counsel explains, this court approved the type of sentence structure at issue here in ***State v. Aytch***, 154 Wis. 2d 508, 509-12, 453 N.W.2d 906 (Ct. App. 1990) (holding that a circuit court imposed a lawfully-structured disposition when the circuit court imposed consecutive prison sentences but stayed the second of the two sentences in favor of a period of probation to run concurrent to the first prison sentence). A challenge to the sentence structure here would be frivolous within the meaning of ***Anders***.

Last, we conclude that Schuenke could not pursue an arguably meritorious challenge to the order that he pay restitution to N.C. in the amount of $780.04. Schuenke stipulated to restitution in that amount, *see* WIS. STAT. § 973.20(13)(c), and a challenge to the restitution order therefore would be frivolous within the meaning of ***Anders***. *See* ***Scherreiks***, 153 Wis. 2d at 518.

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.

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

IT IS FURTHER ORDERED that Attorney Pamela Moorshead is relieved of any further representation of Lloyd Thomas Schuenke in this matter. *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