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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

July 31, 2024

To:

Hon. Jennifer R. Dorow
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Nancy A. Dominski
Electronic Notice

Molly Marie Schmidt
Waukesha County District Attorney's Office
G72
515 W. Moreland Blvd.
Waukesha, WI 53188

Daniel Joseph Seaman
1565 Spring Drive
Brookfield, WI 53005

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

2023AP2419-CRNM State of Wisconsin v. Daniel Joseph Seaman
(L.C. # 2021CF1463)

Before Gundrum, P.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).

Attorney Nancy A. Dominski, as appointed counsel for Daniel Joseph Seaman, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22) and *Anders v. California*, 386 U.S. 738 (1967). Seaman filed a response. Upon consideration of the report, Seaman's response, and an independent review of the record, as mandated by *Anders*, we conclude that the judgment

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.

may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The State charged Seaman with one count of strangulation and suffocation, one count of disorderly conduct, and one count of misdemeanor battery, all as acts of domestic abuse. Pursuant to a negotiated plea agreement, Seaman pled no contest to two misdemeanor counts of disorderly conduct as acts of domestic abuse. The circuit court withheld sentencing Seaman and ordered him to serve two years of probation for each count. The circuit court further indicated that it would allow for early termination of Seaman's probation if he completed domestic violence counseling through a State-certified batterer's intervention program.²

The no-merit report addresses the validity of Seaman's pleas. Our review of the record and of counsel's analysis in the no-merit report satisfies us that the circuit court complied with its obligations for taking Seaman's no-contest pleas, 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. There would be no arguable merit to a claim that Seaman's pleas were not validly entered.

This court has also analyzed whether there would be arguable merit to a claim that the circuit court erroneously exercised its sentencing 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

² The Honorable Dennis Moroney presided over Seaman's combined plea and sentencing hearing. The Honorable Jennifer R. Dorow entered the judgment of conviction and presided over a subsequent review hearing where the victim made a statement.

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. The weight to be given to each factor is committed to the circuit court's discretion. *Ziegler*, 289 Wis. 2d 594, ¶23. This court will sustain a circuit court's exercise of sentencing discretion if the sentence imposed was one that a reasonable judge might impose, even if this court or another judge might have imposed a different sentence. *State v. Odom*, 2006 WI App 145, ¶8, 294 Wis. 2d 844, 720 N.W.2d 695. This court's review of the record confirms that there would be no arguable merit to a challenge to the court's sentencing discretion.

Turning to Seaman's response, he argues that he was coerced into accepting a plea deal "without preparation" and indicates that he did not anticipate proceeding directly to sentencing. Seaman indicates that he was afraid he would receive a harsher punishment if he went against trial counsel's advice. According to Seaman, trial counsel did not inform him of the ramifications of accepting a plea deal and how it would impact his child custody case. Seaman further contends that during the plea hearing, he was in "absolute confusion and distress."

The transcript of the combined plea and sentencing hearing belies Seaman's claims. During the plea hearing, Seaman confirmed for the circuit court that he was entering his pleas freely, voluntarily, and intelligently and that he was satisfied with his trial counsel's representation. After the court accepted Seaman's pleas, trial counsel informed the court that it could proceed directly to sentencing. Trial counsel stated that Seaman had no objection. Seaman subsequently made sentencing remarks to the court and at no point did he express that he

did not wish to proceed to sentencing.³ In light of the record, any claim that Seaman was forced into proceeding is inconsistent with the position he took below. *See State v. Michels*, 141 Wis. 2d 81, 98, 414 N.W.2d 311 (Ct. App. 1987) (a party cannot take inconsistent positions).

Insofar as Seaman suggests that trial counsel had an obligation to anticipate and explain how Seaman's pleas in this case would impact child custody, this claim lacks arguable merit. Any such impact is, at best, a collateral consequence of his pleas. *See State v. Kosina*, 226 Wis. 2d 482, 486, 595 N.W.2d 464 (Ct. App. 1999) (A collateral consequence is one that does not automatically flow from the plea.). A defendant does not have to be informed of a collateral consequence before entering a guilty or no-contest plea. *See State v. Bollig*, 2000 WI 6, ¶¶16, 27, 232 Wis. 2d 561, 605 N.W.2d 199. Consequently, there is no arguable merit to a claim of ineffective assistance on the basis.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Seaman further in this appeal.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Nancy A. Dominski is relieved of further representation of Daniel Joseph Seaman in this matter. *See* WIS. STAT. RULE 809.32(3).

³ Even at the review hearing that followed the combined plea and sentencing hearing, Seaman did not notify the circuit court of his concerns.

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

Samuel A. Christensen
Clerk of Court of Appeals