



OFFICE OF THE CLERK
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

September 18, 2024

To:

Hon. Tricia Walker
Circuit Court Judge
Electronic Notice

Michelle Weber
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Kathilynne Grotelueschen
Electronic Notice

Michael L. Miller, #376901
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2023AP944-CRNM State of Wisconsin v. Michael L. Miller (L.C. #2020CF279)

Before Neubauer, Grogan and Lazar, 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).

Michael L. Miller appeals a judgment of conviction for five counts of possession of child pornography, two counts of arson, two counts of first-degree recklessly endangering safety, two counts of felony criminal damage to property, and one count of burglary. His appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Upon consideration of the no-merit report and Miller's response, and following our independent review of the record as mandated by *Anders*,

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

we conclude there is no issue of arguable merit that could be raised on appeal. We therefore summarily affirm the judgment. *See* WIS. STAT. RULE 809.21(1).

Miller was charged in a criminal complaint with eleven counts of arson to a building, five counts of possession of child pornography, four counts of felony criminal damage to property, three counts of burglary, three counts of first-degree recklessly endangering safety, and a single count of arson of property other than a building. According to the complaint, police began investigating Miller in connection with a series of fires after he provided police with a tip about a vehicle possibly involved. Miller ultimately admitted to starting numerous fires between December 2018 and March 2020, including in occupied buildings. While examining his phone during one of the interviews, police found child pornography.

Miller's appointed counsel questioned Miller's competency prior to the preliminary hearing. Miller was found competent based upon the report and testimony of a forensic psychologist. Miller entered pleas of not guilty and not guilty by reason of mental disease or defect (NGI) at the arraignment. The proceedings were delayed at the request of the appointed psychiatrist, who needed additional time to complete his NGI evaluation, and by Miller's request for new counsel.² The psychiatrist ultimately offered an opinion that did not support an NGI plea.

Miller's counsel also filed several motions, including motions to suppress statements and evidence and a motion to dismiss as a sanction for the State's failure to preserve evidence.

² The circuit court ultimately appointed counsel at county expense. It also appointed successor counsel at county expense, though the successor order required Miller to reimburse the county for any fees it incurred due to the representation. We address the reimbursement matter below.

Those motions were never addressed by the circuit court, as Miller elected to proceed under a plea agreement with the State.

The terms of the plea agreement were as follows: Miller would plead no contest to the five child pornography counts, two counts of arson, two counts of first-degree recklessly endangering safety, two counts of felony criminal damage to property, and one count of burglary. The remaining charges were to be dismissed and read in. Also, any uncharged offenses for other child pornography found on Miller's phone were to be read in. The State agreed to cap its total initial confinement recommendation to twenty-five years, with no cap on its extended supervision recommendation. The defense was free to argue regarding the appropriate sentence. The parties agreed to jointly request a presentence investigation report (PSI) and were free to argue on all other conditions.

The circuit court reviewed a completed Plea Questionnaire/Waiver of Rights form with Miller and conducted a plea colloquy, after which it accepted Miller's no-contest pleas. At sentencing, the parties anticipated stipulating to restitution, and neither party requested changes to the PSI. The State requested that the circuit court impose the maximum sentence of twenty-five years' initial confinement and fifteen years' extended supervision on the arson count involving a home occupied by an eighty-eight-year-old woman, with concurrent maximum sentences on the other offenses (all of which were of an equivalent or lesser felony classification). The defense recommended a total fifteen-year term of initial confinement and extended supervision at the court's discretion, with the sentences on all counts to run concurrently.

The circuit court considered the gravity of the offenses, Miller's character and rehabilitative potential, and the need to protect the community. Rating the offense levels as "high," the court remarked that Miller's behavior was not a straightforward mental health issue but rather was "born out of boredom and a desire for instant gratification and expressing anger." The court noted Miller's extensive treatment needs and concluded the public required protection from Miller's shocking conduct. The court imposed a global sentence consisting of twenty-five years' initial confinement and twenty-five years' extended supervision.³ Conditions of extended supervision included absolute sobriety, no contact with the victims or with children absent agent approval and a chaperone, and lifetime sex offender registry. The court denied the defense request for substance abuse program eligibility and ordered the stipulated amount of sentence credit.

The no-merit report concludes there is no arguable merit to any challenge based on the sufficiency of the plea colloquy; the knowing, intelligent and voluntary nature of Miller's pleas; or the circuit court's exercise of its sentencing discretion. Our review of the appellate record satisfies us that the no-merit report sufficiently analyzes these issues and properly concludes that any challenge based upon them would lack arguable merit.

³ The circuit court structured the sentences as follows: on the child pornography counts, five years' initial confinement and ten years' extended supervision on each count, concurrent to one another but consecutive to any other sentence; on the arson counts, twenty years' initial confinement and fifteen years' extended supervision, consecutive to the child pornography sentences; on the recklessly endangering safety and criminal damage to property counts, five years' initial confinement and five years' extended supervision, concurrent to the arson sentences; and on the criminal damage to property counts, one year of initial confinement and one year of extended supervision, concurrent to all but the child pornography counts.

The no-merit report does not address the competency proceedings, which were initiated prior to the preliminary hearing. Our review of the appellate record shows that no probable cause determination was made prior to the referral for a competency examination, contrary to WIS. STAT. § 971.14(1r)(c). However, because defense counsel affirmatively requested that the proceedings be paused, any error in this respect would not provide a basis for a non-frivolous argument for reversal. *See State v. Slater*, 2021 WI App 88, ¶40, 400 Wis. 2d 93, 968 N.W.2d 740 (explaining doctrine of invited error). Additionally, in light of the subsequent finding of probable cause at the preliminary hearing, the failure to find probable cause at the inception of the competency proceedings had no effect on the outcome of the case. *See State v. Dyess*, 124 Wis. 2d 525, 543, 370 N.W.2d 222 (1985). Finally, a valid no-contest plea waives all nonjurisdictional defects. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

The no-merit report also does not address the order appointing successor counsel at county expense, which contemplated that Miller would reimburse the county for any attorney fees incurred. No issue of arguable merit exists regarding the appointment order. Miller filed a pro se objection to Fond du Lac County's demand for reimbursement, and at sentencing the circuit court amended the appointment order to remove the reimbursement requirement.

Finally, the no-merit report does not discuss restitution, the amount of which was stipulated by defense counsel. The ordered restitution was supported by victim requests and included the ten-percent surcharge contemplated by WIS. STAT. § 973.06(1)(g). We perceive no non-frivolous basis to challenge the amount of restitution ordered.

Our review of the appellate record discloses no other potentially meritorious issues for appeal.

Miller’s response contains general attacks on the strength of the State’s case, as well as broad attacks on the justice system. These matters do not concern the validity of Miller’s pleas, which—by operation of the guilty-plea-waiver rule—are his only means of attacking the underlying convictions. The guilty-plea-waiver rule also requires that we reject as frivolous Miller’s arguments that his *Miranda* rights⁴ were violated during one or more of the interviews and that search warrants were invalid as lacking necessary signatures. Miller elected to plead no contest without the circuit court having resolved his suppression motions, and he cannot now raise nonjurisdictional issues, even those of constitutional dimension. *See Kelty*, 294 Wis. 2d 62, ¶18.

Based on the foregoing,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Kathilynne A. Grotelueschen is relieved of responsibility for further representing Michael L. Miller in this appeal. *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

⁴ *See Miranda v. Arizona*, 384 U.S. 436 (1966).

