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DISTRICT III

February 4, 2025

To:

Hon. Gregory J. Strasser
Circuit Court Judge
Electronic Notice

Kelly Schremp
Clerk of Circuit Court
Marathon County Courthouse
Electronic Notice

Megan Elizabeth Lyneis
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Lee A. Franck 517407
Wisconsin Secure Program Facility
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Boscobel, WI 53805-1000

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

2023AP632-CRNM State of Wisconsin v. Lee A. Franck (L. C. No. 2018CF593)

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).

Lee A. Franck appeals from a judgment, entered upon his guilty plea, convicting him of one count of first-degree intentional homicide. Appellate counsel, Megan Elizabeth Lyneis, has filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).¹ Franck was advised of his right to file a response, but he has not responded. Upon this court's independent review of the record, as mandated by *Anders*, and

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

counsel's report, we conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

In May 2018, the State charged Franck with one count of first-degree intentional homicide and two counts of disorderly conduct as a domestic abuse repeater. The complaint alleged that Franck caused the death of Lyle R. Leith by inflicting blunt force trauma to Leith's head.

Following extensive pre-trial litigation, Franck eventually pled no contest to first-degree intentional homicide. The remaining counts were dismissed and read in for sentencing purposes. The circuit court accepted Franck's plea and sentenced him to life in prison without the possibility of extended supervision. This no-merit appeal follows.

The no-merit report first addresses whether the circuit court properly denied Franck's suppression motions. Counsel correctly notes that a valid no-contest plea waives all nonjurisdictional defects and defenses, *see State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886, with a statutory exception for orders denying motions to suppress evidence, *see* WIS. STAT. § 971.31(10). Here, Franck filed numerous suppression motions, all of which are addressed in counsel's no-merit report. After our thorough review of the various motions and the circuit court's multiple orders on the motions, we agree with counsel's assessment that any appeal of the court's denial of the suppression motions would lack arguable merit.

The no-merit report next addresses whether Franck's plea was knowing, voluntary, and intelligent. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). 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 in taking Franck's plea. *See* WIS. STAT. § 971.08; *Bangert*,

131 Wis. 2d at 261-62; *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. We therefore agree with counsel’s conclusion that any challenge to the validity of Franck’s plea would lack arguable merit.

The final issue the no-merit report addresses is whether the circuit court properly exercised its sentencing discretion. We agree that there would be no arguable basis to assert that the court erroneously exercised its sentencing discretion, *see State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197, or that the sentence was excessive, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

At sentencing, the circuit court must 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, and it must determine which objective or objectives are of greatest importance, *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public. *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.*

In this case, the circuit court applied the standard sentencing factors and explained their application in accordance with the framework set forth in *Gallion* and its progeny. Thus, this court is satisfied that the no-merit report properly analyzes this issue as being without arguable merit.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Megan Elizabeth Lyneis is relieved of her obligation to further represent Lee A. Franck 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