



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 IV/III

December 16, 2014

To:

Hon. Richard T. Werner
Circuit Court Judge
Rock Co. Courthouse
51 S. Main Street
Janesville, WI 53545

Eldred Mielke
Clerk of Circuit Court
Rock Co. Courthouse
51 S. Main Street
Janesville, WI 53545

Clayton Griessmeyer
Law Office of Clayton Griessmeyer
P.O. Box 930473
Verona, WI 53593-0473

Gerald A. Urbik
Asst. District Attorney
51 S. Main St.
Janesville, WI 53545

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Billy D. Evans 248452
Green Bay Corr. Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2012AP1971-CRNM State of Wisconsin v. Billy D. Evans
2012AP1972-CRNM (L. C. ##2010CF2500, 2010CM2625)

Before Stark, J.¹

Counsel for Billy Evans has filed a no-merit report in these consolidated cases concluding there is no basis to challenge Evans' convictions for disorderly conduct and obstructing an officer, both as repeaters, in case No. 2012AP1971-CRNM; and obstructing an officer, as a repeater, in case No. 2012AP1972-CRNM. Evans has responded. Upon our

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised and summarily affirm.²

At approximately 11:30 p.m. on October 18, 2010, police stopped Evans' vehicle and Evans identified himself as "Melvin K. Evans." He was subsequently charged in case No. 2012AP1972-CRNM with misdemeanor obstructing an officer. At 4:46 a.m. on October 19, 2010, police were dispatched to a residence in Janesville and an individual informed police that Evans had punched him in the face and strangled him around the neck with both hands. Evans was located in a bedroom of the residence hiding behind a door. Police found crack cocaine in his sweatshirt. In case No. 2012AP1971-CRNM, Evans was charged with strangulation and suffocation; misdemeanor battery; and possession of cocaine.

At the preliminary hearing,³ the victim testified that Evans had arrived at the victim's residence at "[a]bout 11:30, 12:00." The victim also stated, "He got pulled over before he got to the house; cops let him go" The victim later asked Evans to leave his residence "[b]ecause we were going to sleep, and we didn't want him there no more." Evans "[f]reaked out ... [a]nd the next thing you know I got punched and choked, and I was thrown on the ground." The victim testified that his girlfriend called the police. She subsequently said, "The police are here now," and went to open the door. Evans "grabbed the door, slammed it and tried to take off to the back room." Evans said, "Don't let the police in."

² Evans filed a "Motion [For] Release On Bond Pending Appeal and Motion to Stay Sentence Pending Appeal." Because we summarily affirm the conviction, the motion will not be further addressed.

³ At the preliminary hearing in case No. 2012AP1971CRNM, the circuit court stated at the outset, "Two files here: 10CF2500, which is here for a preliminary hearing, and 10CM2499, which follows along."

The circuit court bound the matter over for trial in case No. 2012AP1971-CRNM. The State moved to dismiss case No. 2012AP1972, in order to file a new complaint with a repeater allegation. Evans' trial counsel advised the court that they had received a copy of the new complaint, and stated, "We'd waive reading, reserving rights to make objections to form and content, and we'd stand mute." The court entered a not guilty plea.

In case No. 2012AP1971-CRNM, an Information was filed subsequent to the preliminary hearing that added repeater enhancers to the charges,⁴ and also added one count of disorderly conduct and one count of obstructing an officer, both as repeaters.

Evans agreed to plead no contest to one count of obstructing and one count of disorderly conduct, as repeaters in case No. 2012AP1971-CRNM, and no contest to the single count of obstructing in case No. 20121972-CRNM. In exchange, the State agreed to recommend dismissing the strangulation and suffocation, misdemeanor battery and crack cocaine charges. The State also agreed to recommend dismissing an unrelated felony case.

The parties jointly recommended one year initial confinement and one year extended supervision on each count, consecutive to each other and to any other sentence Evans was serving. The court accepted the plea agreement and imposed a sentence consistent with the joint recommendation.

There is no manifest injustice upon which Evans could withdraw his pleas. *See State v. Duychak*, 133 Wis. 2d 307, 312, 395 N.W.2d 795 (Ct. App. 1986). The circuit court's colloquy,

⁴ An amended Information corrected a scrivener's error regarding the basis for the repeater allegation in count two.

buttressed by the plea questionnaires and waiver of rights forms, informed Evans of the constitutional rights he waived by pleading no contest, the elements of the offenses, and the potential penalties. Evans admitted at the plea colloquy that an adequate factual basis supported the convictions. The court specifically advised Evans that it was not bound by the parties' plea agreement and also advised Evans of the deportation consequences of the pleas. The record shows the pleas were knowingly, voluntarily and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986).

Evans insists the underlying basis for the repeater enhancers "was unlawful." He also argues the repeater allegations violated double jeopardy, as well as the Eighth and Thirteenth Amendments. He also contends the repeater allegations were improperly added after he initially entered a not guilty plea, and the additional charges were improperly added after the preliminary hearing.

Evans' arguments were waived. Evans' no contest pleas constituted a waiver of all nonjurisdictional defects and defenses, including constitutional issues. *See id.* at 260-61. In addition, the court was advised, "Mr. Evans will be admitting this is a repeated offense," and Evans subsequently admitted at the plea hearing that he was a repeater based upon a conviction "that remains of record and unreversed." As mentioned, Evans also admitted that a proper factual basis supported the convictions.

Evans also argues the two obstruction charges violated double jeopardy because they were "One-In-The Same stemming not from the two separate incidents, but from one continuous incident" However, the obstructing charge in case No. 2012AP1972-CRNM arose from Evans giving a false name to a police officer during a traffic stop at 11:30 p.m. The obstructing

charge was added to case No. 2012AP1971-CRNM following the preliminary hearing testimony of the victim, who stated that as police were arriving at the victim's residence at 4:46 a.m., Evans grabbed the door, slammed it and said, "Don't let the police in," while he tried to "take off" to hide in the back room.

Evans also argues that his "probation/parole/[extended supervision] should not have been revoked because of credibility issues at the revocation hearing." However, the validity of the probation revocation itself is not the subject of this appeal.⁵ See *State ex rel. Flowers v. DH&SS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978).

There is also no arguable basis to challenge the court's sentencing discretion. The court adopted the joint sentencing recommendation and Evans is therefore estopped from challenging the sentence on appeal. See *State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989).

Evans also insists he was improperly denied sentence credit. Evans claims he is entitled to jail credit in the present cases from the date of his revocation order until the date of sentencing in the present cases. However, pursuant to the joint recommendation, the sentences in the present cases were consecutive to each other and consecutive to any sentence Evans was serving. The circuit court correctly observed that Evans was not entitled to sentence credit for the revocation confinement on the present cases because the sentences imposed in the present cases

⁵ Evans admits in his response to the no-merit report that we advised him in an order dated August 13, 2013, that "neither the original convictions on the revocation cases or the revocations themselves will be before this court."

were consecutive, not concurrent. *See State v. Boettcher*, 144 Wis. 2d 86, 99-100, 423 N.W.2d 533 (1988).⁶

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Clayton Griessmeyer is relieved of further representing Evans in these matters.

Diane M. Fremgen
Clerk of Court of Appeals

⁶ Evans does not dispute the no-merit report's representation that the revocation order dated December 29, 2010, imposed a sentence of three years, eleven months and forty-seven days, and that Evans was awarded credit against that sentence pursuant to a stipulation between the parties.