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June 20, 2017

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

2016AP54-CRNM State v. Joseph D. Ackley (L. C. No. 2014CF4)

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel for Joseph Ackley has filed a no-merit report concluding there is no basis to challenge Ackley's convictions for first-degree intentional homicide and attempted first-degree intentional homicide. Ackley has responded. Upon our 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 on appeal and summarily affirm the judgment. *See* WIS. STAT. RULE 809.21 (2015-16).¹

According to the criminal complaint, police were dispatched to a home in Ashland after reports of shots being fired. When police arrived, they observed Carol Saari in the roadway yelling, “get in there,” and “he is stabbing him.” Officer Michelle Tutor approached the residence and observed William Saari exit the open door covered in blood. Tutor then heard a gunshot and observed William collapse in a snowbank outside the home. Tutor saw Ackley in the doorway of the residence, who then shot at her from inside the residence. Tutor returned fire and observed Ackley running through the residence down a hallway. Tutor checked for William’s pulse, but he was deceased. Tutor entered the residence with another officer, and they observed blood on the floor, in the hallway, and also leading to the door. A large kitchen knife was on the floor in the hallway and a long gun was lying on the floor near the back door. Another officer positioned outside the back door observed a person emerge whom he recognized as Ackley. The officer ordered Ackley to get on the ground and was able to handcuff him and place him in custody. Ackley was covered in blood.

Carol Saari was transported to a hospital emergency room, where she told police she was present in the residence when her husband was shot and stabbed by Ackley.² Carol stated that during the incident she went into Ackley’s bedroom where he was struggling with William. Ackley pointed a gun at her and shot once toward her head but missed.

¹ References to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² Ackley was apparently removed from his mother’s care at a young age and eventually placed with the Saaris, who are his biological father’s great aunt and uncle.

A medical examiner reported William had been shot three times, with one bullet entering the left side of his chest, piercing the heart and lungs. There were also thirty-seven stab wounds to William's back, front, and abdomen. The report concluded William died from a combination of gunshots and stab wounds.

Ackley was charged with first-degree intentional homicide and two counts of attempted first-degree intentional homicide. A competency evaluation was ordered, which concluded Ackley "does not lack substantial mental capacity to understand the proceedings or assist in his own defense." Ackley also represented to the circuit court that he was competent. The court found he was competent based on the competency report. After finding probable cause to believe Ackley committed the offenses alleged, a reverse waiver hearing was held under WIS. STAT. § 970.032(2).³ The court analyzed Ackley's treatment needs, whether transferring the matter would depreciate the seriousness of the offenses, and compared the treatment available in the adult and juvenile systems. The court determined each of the three charged offenses was violent, aggressive, willful, premeditated, and each on its own was serious enough to warrant adult jurisdiction. The court also found there was an inadequate deterrent effect. The court concluded Ackley failed to satisfy his burden under § 970.032(2).

Ackley pled no-contest to first-degree intentional homicide and attempted first-degree intentional homicide, and the remaining count regarding the attempt on Tutor was dismissed and read in. The circuit court imposed a life sentence with extended supervision eligibility after forty

³ Pursuant to WIS. STAT. § 938.183, a juvenile who is alleged to have committed a violation of WIS. STAT. § 940.01 on or after the juvenile's tenth birthday is under original adult court jurisdiction for criminal proceedings. Ackley allegedly committed the offense on the eve of his fourteenth birthday.

years on the first-degree murder count, and a concurrent sentence of ten years' initial confinement and ten years' extended supervision on the attempted homicide count.

There is no manifest injustice upon which Ackley 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, buttressed by the plea questionnaire and waiver of rights form, informed Ackley of the constitutional rights he waived by pleading no contest, the elements of the offenses, and the potential punishment. The court specifically advised Ackley it was not bound by the parties' agreement and could impose the maximum potential punishment. The court also specifically advised Ackley of the potential deportation consequences of his pleas, as mandated by WIS. STAT. § 971.08(1)(c). Ackley stipulated the allegations of the complaint provided a sufficient factual basis to support the conviction. The court also confirmed medications Ackley was taking did not interfere with his ability to understand the proceedings. The record shows the pleas were knowingly, voluntarily, and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). Entry of a valid no-contest or guilty plea constitutes a waiver of non-jurisdictional defenses and defects, including constitutional claims. *Id.* at 265-66.⁴

Ackley's response to the no-merit report suggests his sentence was overly harsh.⁵ However, the record discloses no arguable basis to challenge the circuit court's sentencing

⁴ The pleas in this case waive any challenges to competency and the circuit court's discretionary ruling at the reverse waiver hearing. In any event, there is no arguable issue on the merits. The court considered proper statutory factors and engaged in a rational mental process based on the facts of record and balanced the relevant legal criteria. A proper exercise of discretion requires no more. *See State v. Verhagen*, 198 Wis. 2d 177, 193-94, 542 N.W.2d 189 (1994).

⁵ Ackley's response to the no-merit report states in part:

(continued)

discretion. The circuit court considered the proper factors, including Ackley's character, the seriousness of the offenses, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶59-61, 270 Wis.2d 535, 678 N.W.2d 197. The court specifically noted with regard to Ackley's character, "[A] number of bad acts. We see a number of times where he has harmed others or attempted to harm others." The court also stated, "[I]t is hard to conceive of how it could be more aggravated. There was an attempt to kill three people. One ... of those people died. ... This is bad conduct of what I would consider biblical proportion" The court also noted the act was premeditated:

[Ackley] wanted to take the car, he wanted to head out. And, so, his plan was to kill his parents so that they couldn't stop him from leaving[.]

....

So, he sat in ambush for his father, and he shot him. ... So after he shot him, he stabbed him, he shot him again, he shot at his mother, shot at the police officer.

Other people's lives were essentially meaningless to Mr. Ackley. He find [sic] out after that he had been text messaging others to say he was planning on killing his parents, essentially bragging about his intended brutality.

The court concluded:

The crime is horrific. Bill Saari was brutally murdered, there's no excuse for it, and yet when we look at the punishment can this

All I'm really trying to say is that I'd like a chance to be released while I am still young. One reason is because I have two sisters that are not doing well; one is facing 5 to 15 years in a Florida prison and I would like to be there for her. The other sister is diabetic and she is only 18 years old and the doctors indicate that if she doesn't change her ways she will not make it to 25, and if she dies I will not be able to attend her funeral.

Defendant ever satisfy us that he is not a danger to the public? I don't know that.

So, I think it is appropriate to give the Defendant an opportunity to prove that he has changed, that he is not dangerous. And given the offense, given the loss, that opportunity should not be around the corner, it shouldn't be in 20 years; in fact, it shouldn't even be in 30 years.

The circuit court allowed the possibility of extended supervision after forty years on the first-degree homicide charge. On the attempted homicide charge, the court imposed a concurrent twenty-year sentence. The maximum potential punishment for first-degree intentional homicide was life imprisonment. WIS. STAT. §§ 940.01(1)(a); 939.50(3)(a). The maximum for attempted first-degree intentional homicide was sixty years. WIS. STAT. §§ 940.01(1)(a); 939.50(3)(a); 939.32. The sentence imposed was less than the maximum allowable by law and was the product of a rational mental process. The sentences do not violate the judgment of reasonable people and are not overly harsh or excessive. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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

Therefore,

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

IT IS FURTHER ORDERED that attorney Susan Alesia is relieved of further representing Ackley in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals