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DISTRICT II

March 7, 2018

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

2017AP2362-CRNM State of Wisconsin v. Albert J. Harris (L.C. #2017CF114)

Before Neubauer, C.J., Reilly, P.J. and Hagedorn, J.

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).

Albert J. Harris appeals from a judgment convicting him of substantial battery and attempted strangulation and suffocation. Both carried domestic abuse surcharges and repeater penalty enhancers. Appointed counsel has filed a no-merit report pursuant to WIS. STAT. RULE

809.32 (2015-16)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Harris received a copy of the report and was notified of his right to file a response but has not done so. We conclude that the case is appropriate for summary disposition, *see* WIS. STAT. RULE 809.21, and, after our independent review of the record, that there is no arguable merit to any issue that could be raised on appeal.

Harris came home drunk and savagely beat up A.P., his live-in girlfriend. He bit, kicked, and punched her, tore out handfuls of her hair, dropped a television on her, and strangled her nearly to death. He was charged with two counts misdemeanor battery, two counts attempted strangulation and suffocation, one count criminal damage to property, and one count disorderly conduct. All were charged as domestic-abuse offenses. The complaint was amended to allege the same six charges, but added a repeat offender penalty enhancer to each count and amended the battery charges to substantial battery.

The parties negotiated a plea deal. Harris would plead no contest to Count 1, substantial battery, and Count 2, attempted strangulation and suffocation, each as a domestic-abuse offense and with a repeater penalty enhancer; the remaining counts would be dismissed and read in; and the State would recommend one and one-half years' initial confinement (IC) and one and one-half years' extended supervision (ES) on each count, to be served consecutively. At sentencing, the court imposed four years and six months of IC and one year and six months of ES on Count 1 with a consecutive five years' probation on Count 2, and consecutive to any other sentence.[2]

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[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[2] Harris was on probation in three other cases at the time of sentencing.

The no-merit report considers whether any arguable challenge could be made to the plea or the sentence. Counsel advises that Harris regrets entering a plea and that, or perhaps because, he believes his sentence is too harsh. Neither complaint rises to a meritorious argument.

The plea colloquy was textbook perfect. Counsel thoroughly and comprehensively examined the plea. We agree that the plea taking easily passes muster under WIS. STAT. § 971.08 and ***State v. Bangert***, 131 Wis. 2d 246, 260, 270-72, 389 N.W.2d 12 (1986), and that nothing in the record suggests a manifest injustice that warrants plea withdrawal, *see* ***State v. Washington***, 176 Wis. 2d 205, 213-14 & n.2, 500 N.W.2d 331 (Ct. App. 1993). Disappointment in one's eventual sentence is not sufficient grounds for plea withdrawal. ***State v. Booth***, 142 Wis. 2d 232, 237, 418 N.W.2d 20 (Ct. App. 1987). No issue of arguable merit could arise regarding the plea.

The no-merit report also considers whether a challenge to the sentence would be meritorious. Sentencing lies within the sound discretion of the trial court, and a strong policy exists against appellate interference with that discretion. *See* ***State v. Haskins***, 139 Wis. 2d 257, 268, 407 N.W.2d 309 (Ct. App. 1987). The primary factors to be considered by the trial court in sentencing are the gravity of the offense, the character of the offender, and the need for the protection of the public. ***State v. Harris***, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The weight to be given the various factors is within the trial court's discretion. ***Cunningham v. State***, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977).

The court here first focused on the gravity of the offense. It noted the "savage," "vicious" nature of the beating and the "degradation" Harris inflicted when, while strangling A.P. "within an inch of her life," she urinated or defecated on herself. The court considered Harris' character, noting his lengthy criminal history and pattern of domestic abuse, and that this

was the second incident that night—the girlfriend told him to just leave after the first one and she would not call the police; he returned about an hour later and violently set upon her, telling her, "You're going to die tonight." The court found that there is an "incredible" need to protect the public from Harris. His dangerous behavior is random, unpredictable, and "profoundly violent." As to his rehabilitative needs, the court noted that Harris was on probation and should not have been drinking at all, yet he continued to abuse alcohol, a habit exacerbated by mixing alcohol with his prescription drugs for schizophrenia and depression. He also has anger issues. The court rejected the parties' sentencing recommendations as failing to reflect the seriousness of the offense in physical and long-term emotional ways.

Harris faced fourteen and one-half years' imprisonment and a fine of up to $15,000. The sentence imposed was below-maximum. Considering that he committed these heinous offenses while on probation, nearly killing A.P., no arguable claim could be made that his six-year sentence, plus five years' probation, is "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potentially meritorious issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Daniel R. Goggin II is relieved from further representing Harris in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals