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DISTRICT II

December 19, 2018

To:

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

2018AP830-CRNM State of Wisconsin v. Marcus A. Beck (L.C. #2015CF804)

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).

Marcus A. Beck appeals from an order of restitution resulting from his conviction for possession of THC, second or subsequent offense, and resisting an officer causing soft-tissue

injury.¹ Beck's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)² and *Anders v. California*, 386 U.S. 738 (1967), and, per counsel, at Beck's request. Beck was advised of his right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the order because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Several uniformed City of Kenosha police officers were dispatched to a residence for a "trouble unknown" call. Two women, several children, and Beck were inside. The women and Beck said nothing was wrong. One woman's shirt had droplets of blood on it that she said were from an earlier nosebleed; she denied being struck. Beck, seated on a couch, refused officers' commands to stand up. One officer observed next to Beck a large clear plastic bag partially tucked between the cushion and armrest. The material in the bag proved to be marijuana and ecstasy pills. Beck actively resisted the officers, even after he was handcuffed, injuring the shoulder of one officer and the knee of another. Both officers required medical treatment; one was off work for a time.

Beck was charged with one count each of possession of THC, second or subsequent offense; possession of a controlled substance, second or subsequent offense; and attempting to disarm a peace officer. He also was charged with two counts of resisting an officer causing soft-

¹ Beck's notice of appeal indicates that he appeals from both the judgment and the order, but the State Public Defender appointment order denominates the case type as "restitution" and ordered only the transcript from the restitution hearing, and the no-merit report advises that "[t]he scope of appellate counsel's representation in this case is limited to the restitution issue."

² All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

tissue injury. A repeater penalty enhancer was attached to all five counts. Beck pled guilty to the possession of THC charge and to one resisting-an-officer charge. The other charges were dismissed and read in at sentencing.

The court withheld sentence and placed Beck on three years' probation and stayed twelve months' conditional jail. After a restitution hearing, the court commissioner ordered Beck to pay \$39,297.20 (\$34,726.61 for the officer who was off work plus \$4570.59 for the other) to cover the medical bills and lost wages the officers incurred.

Beck stipulated to the \$4570.59 but challenged the restitution order as to the officer who lost wages. He contended he was not legally liable because that officer allegedly worked at another physical job while receiving disability pay and that he was unable to pay the ordered amount. After holding two evidentiary hearings, the circuit court refused to reduce the amount of restitution and found that Beck had the ability to pay it. This no-merit appeal followed.

If a crime considered at sentencing resulted in bodily injury, the restitution order may require that the defendant pay the cost of necessary medical care and reimburse the injured person for income lost as a result of that crime. WIS. STAT. § 973.20(3)(a), (c). A “[c]rime considered at sentencing” includes read-in crimes. Sec. 973.20(1g)(a).

A request for restitution is addressed to the circuit court's discretion. *State v. Anderson*, 215 Wis. 2d 673, 677, 573 N.W.2d 872 (Ct. App. 1997). While the court must consider a defendant's ability to pay, WIS. STAT. § 973.20(13)(a), it must order restitution “unless [it] finds substantial reason not to do so and states the reason on the record,” § 973.20(1r); see *State v. Borst*, 181 Wis. 2d 118, 121-22, 510 N.W.2d 739 (Ct. App. 1993).

In the framework of these legal principles, the no-merit report comprehensively analyzed the restitution order. We concur with appellate counsel's analysis and his conclusion that no issue of arguable merit could be raised.

Our review of the record discloses no other potential issues for appeal. Beck's guilty plea waived the right to raise nonjurisdictional defects and defenses arising from proceedings before entry of the plea, including claimed violations of constitutional rights. *See State v. Kraemer*, 156 Wis. 2d 761, 765, 457 N.W.2d 562 (Ct. App. 1990). Accordingly, this court accepts the no-merit report, affirms the conviction and order for restitution, and discharges appellate counsel of the obligation to represent Beck further in this appeal. Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Michael J. Herbert is relieved from further representing Beck 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