



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 II/IV

December 18, 2018

To:

Hon. Jodi L. Meier
Circuit Court Judge
Kenosha County Courthouse
912 56th St.
Kenosha, WI 53140

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
912 56th St.
Kenosha, WI 53140

Carl W. Chesshir
Chesshir Law Office
S101 W34417 Hwy LO, Ste. B
Eagle, WI 53119

Michael D. Graveley
District Attorney
912 56th St.
Kenosha, WI 53140-3747

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Jeremy T. Shorter 479280
Waupun Correctional Inst.
P.O. Box 351
Waupun, WI 53963-0351

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

2018AP85-CRNM State of Wisconsin v. Jeremy T. Shorter (L.C. # 2016CF27)

Before Blanchard, Kloppenburg and Fitzpatrick, 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).

Jeremy Shorter appeals a judgment convicting him, after a no contest plea, of first degree recklessly endangering safety with use of a dangerous weapon, kidnapping, second degree sexual assault with use of force, and false imprisonment, all as repeaters. Attorney Carl Chesshir has filed a no-merit report seeking to withdraw as appellate counsel. WIS. STAT. RULE 809.32 (2015-

16);¹ *see also Anders v. California*, 386 U.S. 738, 744 (1967); and *State ex rel. McCoy v. Wisconsin Court of Appeals*, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the validity of the pleas and sentences. Shorter was sent a copy of the report and has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); *State v. Krieger*, 163 Wis. 2d 241, 249-51 and n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Shorter entered his pleas pursuant to a negotiated plea agreement that was presented in open court. In exchange for Shorter's pleas, the State agreed to dismiss several charges outright, and to dismiss but read in other charges. The parties agreed that they were each free to argue as to sentencing recommendations.

The circuit court conducted a standard plea colloquy, inquiring into Shorter's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring his understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. *See* WIS. STAT. § 971.08; *State v. Hoppe*,

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

2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and *Bangert*, 131 Wis. 2d at 266-72. In addition, Shorter provided the court with a signed plea questionnaire. Shorter indicated to the court that he understood the information explained on that form and is not now claiming otherwise. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

The court found that the facts in the complaint formed a sufficient factual basis for the pleas, and Shorter confirmed on the record that he had reviewed the complaint and understood that it would be used as a factual basis for a finding of guilt. Shorter admitted his status as a repeat offender in open court, having been convicted of at least three misdemeanors within the preceding five years. The court drew Shorter's attention to the fact that Counts Five and Six, for reckless endangerment and sexual assault, were charged as acts of domestic abuse, and Shorter confirmed that he understood. *See WIS. STAT. § 968.075(1)*. The circuit court then entered a finding on the record that Counts Five and Six were acts of domestic abuse.

Shorter indicated satisfaction with his attorney, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Shorter has not alleged any other facts that would give rise to a manifest injustice. Therefore, his pleas are valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Shorter's sentences would also lack arguable merit. The court sentenced Shorter to five years of initial confinement and four years of extended supervision on Count Three, reckless endangerment of safety, to be served concurrent with the sentence imposed on Count Five; to ten years of initial confinement and eight years of extended supervision on Count

Five, the kidnapping count; to ten years of initial confinement and eight years of extended supervision on Count Six, the sexual assault count, to be served consecutive to the sentence on Count Five; and to two years of initial confinement and two years of extended supervision on Count Eleven, the false imprisonment count, to be served consecutive to the sentence imposed on Count Six.

The components of the bifurcated sentences imposed were well within the applicable penalty ranges permissible by statute. *See* WIS. STAT. §§ 941.30(1) (classifying first-degree reckless endangerment as a Class F felony); 940.31(1)(a) (classifying kidnapping and carrying another by force as a Class C felony); 940.225(2)(a) (classifying second degree sexual assault by use or threat or force or violence as a Class C felony); 940.30 (classifying false imprisonment as a Class H felony); 973.01(2)(b)6m. and (d)4. (providing maximum terms of seven and a half years of initial confinement and five years of extended supervision for a Class F felony); 973.01(2)(b)3. and (d)2. (providing maximum terms of twenty-five years of initial confinement and fifteen years of extended supervision for a Class C felony); 973.01(2)(b)8. and (d)5. (providing maximum terms of three years of initial confinement and three years of extended supervision for a Class H felony); 939.62(1)(b) (repeater provision stating that the maximum term of imprisonment of more than one year but not more than ten years may be increased by not more than two years if, as here, the prior convictions were for misdemeanors); 939.62(1)(c) (repeater provision stating that the maximum term of imprisonment of more than ten years may be increased by not more than two years if, as here, the prior convictions were for misdemeanors).

The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678

N.W.2d 197. In this case, the circuit court considered appropriate factors, did not consider improper factors, and reached a reasonable result that was well below the maximum penalty permissible by law. We agree with counsel that there would be no arguable merit to arguing that the sentences imposed were unduly harsh or the product of an erroneous exercise of discretion.

Our independent review of the record presents no other arguably meritorious issues for appeal.

Accordingly,

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

IT IS FURTHER ORDERED that Carl Chesshir is relieved of any further representation of Jeremy Shorter in this matter pursuant to 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