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February 27, 2019

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

2017AP2395-CRNM State of Wisconsin v. Jason J. Hyatt (L.C. # 2014CF57)

Before Lundsten, P.J., Sherman and Kloppenburg, 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).

Jason Hyatt appeals a judgment convicting him, based upon no-contest pleas, of second-degree recklessly endangering safety as domestic abuse, false imprisonment as domestic abuse, and bail jumping. Attorney Suzanne Edwards has filed a no-merit report seeking to withdraw as

appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18);[1] ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses the assistance of counsel and the validity of Hyatt's pleas and sentences. Hyatt was sent a copy of the report, and has filed two responses enumerating seventy additional potential issues he believes could support plea withdrawal or resentencing. Upon reviewing the entire record, as well as the no-merit report and Hyatt's responses, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. The circuit court conducted a plea colloquy, inquiring into Hyatt's ability to understand the proceedings and the voluntariness of his pleas, 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. In addition, Hyatt provided the court with a signed plea questionnaire with attached jury instructions. The facts set forth in the complaint—namely, that, while he was out on bond for another case, Hyatt beat his girlfriend with a baseball bat and tied her up in the apartment they shared—provided a sufficient factual basis for the pleas. In conjunction with the plea questionnaire and complaint, the colloquy was sufficient to satisfy the court's obligations under WIS. STAT. § 971.08. *See* ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

Prior to sentencing, Hyatt moved to withdraw his pleas. He did not allege that he had misunderstood the nature of the charges or his rights, but asserted that his decision to enter pleas was involuntary because he was rushed into it and felt counsel was unprepared for trial. In his

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

responses to the no-merit report, Hyatt expands upon the reasons why he believes his pleas were involuntary. He now asserts that he was unduly pressured to enter his pleas because: the negative media coverage against him was overwhelming and prejudicial; the district attorney overcharged him; a speedy-trial violation in a predecessor to this case prompted charges in another case to be prosecuted, keeping him in jail or prison throughout the proceedings; there was a violation of his privileged communications by prison officials that had a chilling effect on his attorney/client relationship; he was denied adequate medical and mental health care in jail and prison, and was further subjected to harsh conditions of confinement, including prolonged isolation; he was not informed of his right to prompt disposition of an interstate detainer, that there would be no sentence credit for time he was incarcerated on another case while released on signature bond for this case, or about the possibility of an Alford plea; trial counsel lost documents, failed to prepare for trial and otherwise mismanaged his case; and he was unmedicated at various times throughout the proceedings.

In deciding whether to allow a defendant to withdraw a plea, the circuit court may assess the credibility of the proffered explanation for the plea withdrawal request. *See* ***State v. Kivioja***, 225 Wis. 2d 271, 291-92, 592 N.W.2d 220 (1999). The circuit court did so here, and determined that Hyatt's assertion that his plea was involuntary was not credible. Instead, the court found that Hyatt's plea withdrawal motion was prompted by nothing more than belated misgivings and a desire to go to trial. In making its determination, the court noted that Hyatt's mood at the plea hearing had been the most relaxed the court had observed during the proceedings, and that Hyatt was even joking. The court further noted that trial counsel had demonstrated his preparation for trial by preparing to argue a number of motions, and there was no indication that counsel had failed to subpoena any relevant witnesses.

Because the circuit court is in the best position to observe witness demeanor and gauge the persuasiveness of testimony, it is the "'ultimate arbiter'" for credibility determinations when acting as a fact finder, and we will defer to its resolution of discrepancies or disputes in the testimony and its determinations of what weight to give to particular testimony. ***Johnson v. Merta***, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980); *see also* WIS. STAT. § 805.17(2) ("due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses"). Therefore, none of the alleged grounds for plea withdrawal set forth by Hyatt provide an arguably meritorious basis for appeal.

By entering valid pleas, Hyatt waived any right to challenge the strength of the State's case or to seek additional discovery. Therefore, Hyatt's additional assertions relating to such issues—including that the circuit court should have granted his motion for access to the victim's medical records; that the State should have turned over squad car video and photos the police had taken of Hyatt's own injuries; that the victim lied about the assault and/or exaggerated the extent of her injuries; that photos of the victim's injuries taken the day after the assault did not accurately represent the victim's condition; that a psychiatrist who examined the victim was not credible because she was convicted of "operating a pill farm"; and that the victim had made other false accusations in the past— do not provide any meritorious grounds for an appeal.

Next, a challenge to Hyatt's sentences would also lack arguable merit. The record shows that the circuit court considered relevant sentencing factors and rationally explained their application to this case. *See generally* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court then sentenced Hyatt to consecutive terms of: five years of initial confinement and three years of extended supervision on the reckless endangerment count; three years of initial confinement and two years of extended supervision on the false imprisonment

count; and three years of initial confinement and two years of extended supervision on the bail jumping count. The court also awarded 320 days of sentence credit as stipulated by the parties; and it imposed standard costs and conditions of supervision, including absolute sobriety, cooperation with alcohol and psychological evaluations, participation in a domestic violence program and cognitive therapy, and no contact with the victim. The court determined that the defendant was not eligible for the Challenge Incarceration Program but would be eligible for the substance abuse program after eight years. Following a hearing before a court commissioner, the court also imposed restitution in the amount of $28,055.94.

We agree with counsel's assessment that the sentences imposed did not exceed the maximum available penalties, and Hyatt does not contend otherwise. Hyatt raises a series of other issues related to the sentences, falling into several broad categories.

First, Hyatt challenges the accuracy of the information upon which he was sentenced, in several regards. In particular, he continues to assert that the circuit court improperly accepted the victim's account of Hyatt assaulting her with a baseball bat, despite the dismissal of other charges and Hyatt's refusal to "stipulate" to those facts when he entered no-contest pleas. Hyatt also contends that the PSI agent unfairly "perverted" his statements and provided a negative report to punish him for being uncooperative and refusing to answer what Hyatt deemed to be invasive questions; that trial counsel should have obtained an alternate PSI; and that the court cut off his allocution. None of these claims have arguable merit.

The fact that Hyatt pled no contest does not mean that the circuit court was required to accept Hyatt's refusal to acknowledge certain facts alleged by the victim. The court explained that it did not find Hyatt's account of the incident to be credible because the medical records

were consistent with the victim's account. The court was permitted to take into account the facts set forth in the police report attached to the complaint, regardless of what charges resulted from them. Similarly, the PSI agent was entitled to provide the court with her opinion or characterization of Hyatt's level of cooperation during the PSI process, and Hyatt was free to disagree with her characterization, which he did.

There was no requirement that trial counsel obtain an alternate PSI. Both trial counsel and Hyatt himself spent considerable time at the sentencing hearing advising the court about statements in the PSI with which Hyatt disagreed. Hyatt has not identified any other inaccuracies in the PSI or any additional information that should have been presented.

The record does not support Hyatt's claim that the circuit court cut off his allocution. To the contrary, the court allowed Hyatt to proceed with a lengthy and rambling statement over the objection of the State, until Hyatt said that he was wrapping up.

Next, Hyatt challenges the circuit court's exercise of discretion, claiming that: the sentences were unduly harsh; that the domestic abuse enhancers did not justify imposing the maximum sentences; that the no-contact provision with the victim was unrelated to the crime; and that it was pointless to delay his eligibility for the earned release program because he would serve extended supervision. However, the sentences were not disproportionate to the offenses, particularly taking into account that Hyatt has already benefitted from the dismissal of other charges and the court did not make use of the additional time it could have imposed based on the domestic abuse enhancers. *See generally* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. The no-contact provision was highly relevant to the reckless endangerment and false imprisonment charges because it sought to protect the victim of those

offenses from further emotional harm, as well as violence. The circuit court reasonably explained that it was delaying eligibility for the substance abuse program because it would unduly depreciate the seriousness of the offenses if Hyatt served less than eight years in prison.

Hyatt also raises several challenges to the restitution order. He asserts that trial counsel should have challenged his ability to pay; that the 50% deduction from his prison accounts exceeds the statutory maximum set forth in WIS. STAT. § 973.05(4)(b); and that gift money from family members in his trust account should be exempt from restitution. A challenge to Hyatt's ability to pay would not have arguable merit because the circuit court already determined that Hyatt had an ability to pay based upon his training and work history as a carpenter and his work ethic. Although § 973.05(4)(b) limits prison wage assignments to 25% for the collection of fines, surcharges, costs or fees, there is no such limitation under WIS. STAT. § 973.20(12)(a) on the percentage that may be ordered collected from prison wages when restitution is combined with other costs. In addition to prison wages, such combined collection orders also apply to "other moneys held in the defendant's prisoner's account" without any exemptions. § 973.20(11)(c).

Finally, Hyatt contends that the imposition of a DNA surcharge violated the ex post facto clause. However, our supreme court has recently held that the mandatory DNA surcharge is not punishment for purposes of an ex post facto analysis under either the federal or state constitutions. ***State v. Williams***, 2018 WI 59, ¶54, 381 Wis. 2d 661, 912 N.W.2d 373.

Any additional arguments raised in Hyatt's responses are rejected, but do not merit individual discussion. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. Upon an independent review of the record, we have found no other arguable basis for reversing

the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Accordingly,

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

IT IS FURTHER ORDERED that Attorney Suzanne Edwards is relieved of any further representation of Jason Hyatt 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