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DISTRICT III

April 16, 2019

To:

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

2018AP64-CRNM State of Wisconsin v. Andrew G. Yuhas (L. C. No. 2017CF254)

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

Counsel for Andrew Yuhas has filed a no-merit report, concluding there is no basis to challenge Yuhas's conviction for threat to a law enforcement officer, as a repeater. Yuhas was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no merit

to any issue that could be raised on appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2017-18).¹

The criminal complaint alleged that police were dispatched to a residence in Outagamie County pursuant to a report of an intoxicated and abusive disturbance. Upon arrival, the officers heard yelling coming from inside the residence, and they shined their spotlight at the patio door. Yuhas ran to the patio door and yelled, “take the fucking light off the door or I’ll fuck you up.” Yuhas then began pointing at one of the officers and punching the door. Based on Yuhas’s aggressive behavior, the officer drew his Taser. Yuhas yelled, “blow it,” and also referenced how “hard” he was. Yuhas also yelled, “you’re going to need the SWAT, bitch.” Additional police arrived, and Yuhas yelled, “you’re going to need more than that.” He also called one of the officers a “nigga” and told another officer to “suck [his] dick.” Yuhas called the officers “pussy bitches” and threatened to kill the officers and initiate an armed standoff.

Yuhas continued with aggressive threats and statements. He eventually slid the door open and continued to yell. The Taser was eventually deployed, causing Yuhas to fall to the ground. Yuhas was taken into custody. At that time, it was noted that Yuhas’s knuckles were bleeding. While being transported to the jail, Yuhas told an officer to pay attention when Yuhas was released, because Yuhas would find out where the officer lived.

The officers also reported that numerous juveniles were present during the disturbance. Some of the juveniles were crying, and one juvenile sided with his father by calling the police “fucking pigs.” Another of the juveniles was interviewed and stated that Yuhas “snapped” and

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

talked about killing rival gang members. That juvenile stated that he observed Yuhas hitting himself in the head with a pan and yelling that it did not hurt him. The officers further learned that immediately prior to the disturbance, Yuhas had attended a domestic violence class.

Yuhas was charged with one count of threat to a law enforcement officer, as a repeater; one count of obstructing an officer, as a repeater; and one count of disorderly conduct, as a repeater.² Yuhas pleaded no contest to the threat to a law enforcement officer count, and the State recommended the remaining counts be dismissed and read in. The circuit court imposed a sentence consisting of three years and one month of initial confinement and three years of extended supervision.

The no-merit report addresses potential issues regarding whether Yuhas's plea was knowingly, voluntarily, and intelligently entered; whether any exceptions existed to the waiver of nonjurisdictional defects and defenses by virtue of a valid no-contest or guilty plea³; and whether the circuit court properly exercised its sentencing discretion. This court is satisfied that the no-merit report properly analyzed the issues raised, and we will not further address them. Our independent review of the record discloses no other potential issues for appeal.⁴

² The record indicates Yuhas had approximately twenty-eight prior convictions.

³ Limited exceptions exist to the waiver rule to permit appellate review of orders granting motions to suppress. *See* WIS. STAT. § 971.31(10). However, Yuhas did not file any such motions, and there was no arguable basis in the record for a motion to suppress.

⁴ We note the presentence investigation report discussed the COMPAS risk assessment, but the sentencing transcript shows it was not “determinative” of the sentence imposed. *See State v. Loomis*, 2016 WI 68, ¶¶98-99, 371 Wis. 2d 235, 881 N.W.2d 749. Any challenge to the sentence based on COMPAS would therefore lack arguable merit.

Therefore,

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

IT IS FURTHER ORDERED that attorney Leonard D. Kachinsky is relieved of further representing Andrew Yuhas in this matter. *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