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August 7, 2019

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

2018AP1044-CRNM State of Wisconsin v. Adonnis Jamil Conner (L.C. #2015CF2877)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, 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).

Adonnis Jamil Conner appeals from a judgment convicting him of multiple crimes. Conner's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Conner filed a response. Counsel then

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

filed a supplemental no-merit report.[2] After reviewing the record, counsel's reports, and Conner's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Conner was convicted following a jury trial of (1) attempted first-degree intentional homicide as party to a crime; (2) first-degree reckless injury as party to a crime; (3) possession of a firearm as an adjudged delinquent; and (4) felony bail jumping. The charges stemmed from an incident in which Conner and an accomplice shot a man named A.W. six times, causing numerous injuries. At the time of the shooting, Conner had been adjudged delinquent of a felony offense and was out on bond for another felony offense. The circuit court imposed an aggregate sentence of twenty years of initial confinement and fifteen years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether the evidence at Conner's jury trial was sufficient to support his convictions. When reviewing the sufficiency of the evidence, we may not substitute our judgment for that of the jury "unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Our review of the trial transcripts persuades us that the State produced ample evidence to convict Conner of his crimes. That evidence included testimony

[2] The supplemental no-merit report does not address all of the issues raised in Conner's response. Counsel is obligated to discuss those issues and state why they do not have arguable merit. Future no-merit reports may be rejected if they do not fulfill the purpose of WIS. STAT. RULE 809.32.

from A.W., who knew Conner and identified him as one of the shooters. We agree with counsel that a challenge to the sufficiency of the evidence would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the court's sentencing decision had a "rational and explainable basis." ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In fashioning its sentence, the court considered the seriousness of the offenses, Conner's character, and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, the sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Conner's sentence would lack arguable merit.

Finally, the no-merit report addresses several other issues, including (1) whether the jury was selected in a lawful manner; (2) whether Conner knowingly, voluntarily, and intelligently waived his right to testify; (3) whether the jury instructions accurately conveyed the applicable law; and (4) whether improper arguments were made in opening statements or closing arguments. We agree with counsel that these issues do not have arguable merit for appeal, and we will not discuss them further.

As noted, Conner filed a response to counsel's no-merit report. The response touches upon some of the same issues raised in the no-merit report, which we will not repeat. It also complains that (1) the verdicts were inconsistent; (2) the convictions for attempted first-degree intentional homicide and first-degree reckless injury violated double jeopardy; (3) the circuit court erred in allowing the State to file an amended information on the first day of trial, which

added the charge of attempted first-degree intentional homicide; (4) the prosecutor's decision to file an amended information amounted to vindictiveness, as it sought to punish Conner for not accepting a plea offer; (5) trial counsel was ineffective for allowing Conner to stipulate to certain facts[3] without ensuring that the decision was done knowingly, voluntarily, and intelligently; (6) the verdict form for attempted first-degree intentional homicide failed to sufficiently describe party-to-a- crime liability; (7) the circuit court erred in directing Conner to proceed at sentencing with his appointed attorney after Conner alleged a conflict of interest against that attorney; and (8) the circuit court erred in its handling of the presentence investigation (PSI) writer's sentencing recommendation. We are not persuaded that Conner's response presents an issue of arguable merit.

First, unlike civil cases, there is no requirement that verdicts on multiple counts in a criminal case be consistent. *See* ***State v. Thomas***, 2004 WI App 115, ¶¶41-43, 274 Wis. 2d 513, 683 N.W.2d 497. That is because "there is no way of knowing whether the inconsistency was the result of leniency, mistake, or compromise." ***Id.***, ¶42 (citation omitted).

Second, the convictions for attempted first-degree intentional homicide and first-degree reckless injury did not violate double jeopardy. The convictions were not duplicitous because there was no joining of multiple offenses into one. *See* ***Harrell v. State***, 88 Wis. 2d 546, 555, 277 N.W.2d 462 (Ct. App. 1979). Likewise, they were not multiplicitous because (1) the

[3] At trial, Conner stipulated that he had been adjudged delinquent of a felony offense prior to the shooting. He also stipulated to being out on bond for another felony offense prior to the shooting with the condition that he "not commit any crime." These stipulations went to the elements of possession of a firearm as an adjudged delinquent and felony bail jumping.

offenses are not identical in law[4] and (2) there is no indication that the legislature did not intend to authorize multiple punishments.[5] *See* ***State v. Ziegler***, 2012 WI 73, ¶¶60-61, 342 Wis. 2d 256, 816 N.W.2d 238.

Third, the circuit court did not err in allowing the State to file an amended information on the first day of trial. The court may allow amendment of an information at any time in absence of prejudice to the defendant. ***State v. Flakes***, 140 Wis. 2d 411, 418, 410 N.W.2d 614 (Ct. App. 1987). Here, Conner was not prejudiced because he had notice of the alleged conduct underlying the added charge of attempted first-degree intentional homicide. His defense to it was the same as his defense to the charge of first-degree reckless injury (i.e., he was not the shooter).

Fourth, the prosecutor's decision to file an amended information did not amount to vindictiveness. A prosecutor has great discretion in charging decisions. ***State v. Johnson***, 2000 WI 12, ¶16, 232 Wis. 2d 679, 605 N.W.2d 846. There is no presumption of vindictiveness when a prosecutor increases charges prior to trial based on a defendant's refusal to accept a plea offer. *See* ***Bordenkircher v. Hayes***, 434 U.S. 357, 358, 365 (1978) (holding that the prosecutor's conduct did not violate the defendant's due process rights where the prosecutor carried out an explicit threat to file more serious charges against the defendant if the defendant refused to plead guilty to a less serious offense). Conner makes no showing of actual vindictiveness.

[4] Attempted first-degree intentional homicide and first-degree reckless injury require proof of different elements. *See* WIS JI—CRIMINAL 1070 and 1250.

[5] Although Conner was convicted of both charges, he did not receive consecutive sentences. Rather, the circuit court ordered the sentence for first-degree reckless injury to run concurrently.

Fifth, the record demonstrates that Conner's decision to stipulate to certain facts was done knowingly, voluntarily, and intelligently. The circuit court engaged in a careful colloquy with Conner before accepting the stipulations. That colloquy made clear that Conner understood he was relieving the State from having to prove certain elements. It also made clear that Conner was making his decision so that details about his past offenses would not come before the jury. Conner confirmed that he had enough time to talk to his attorney about the decision and had no questions about what he was doing. On this record, we perceive no basis to support a related claim of ineffective assistance of counsel.

Sixth, there was nothing wrong with the verdict form used for attempted first-degree intentional homicide. A verdict form need not describe party-to-a-crime liability where, as here, the jury has been instructed on it. *See* ***Harrison v. State***, 78 Wis. 2d 189, 210, 254 N.W.2d 220 (1977).

Seventh, the circuit court did not err in directing Conner to proceed at sentencing with his appointed attorney after Conner alleged a conflict of interest against that attorney. Conner's alleged conflict of interest was vague and undeveloped. He simply said that he ran across another inmate who said his case "was being discussed." Conner's attorney did not know what Conner was referring to and told the court that she could not "think of a situation where that kind of statement would be applicable." Again, on this record, we perceive no basis for postponing the sentencing or appointing another attorney to represent Conner.[6]

[6] Conner's sentencing was already delayed by the fact that, after his trial, he filed a complaint against his trial attorney with the Office of Lawyer Regulation. That attorney withdrew from the case, and a new attorney was appointed to represent Conner at sentencing.

Finally, the circuit court did not err in its handling of the PSI writer's sentencing recommendation. The court simply noted that it was "not sure" what to do with the recommendation as the PSI writer inexplicably omitted the conviction of attempted first-degree intentional homicide from his report. This was a valid concern. In any event, the court was well within its right to discount the PSI writer's sentencing recommendation. *See* ***State v. Hall***, 2002 WI App 108, ¶16, 255 Wis. 2d 662, 648 N.W.2d 41 (court not bound by PSI recommendation).

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Sara Heinemann Roemaat of further representation in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Sarah Heinemann Roemaat is relieved of further representation of Adonnis Jamil Conner 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