



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 I

December 3, 2019

To:

Hon. T. Christopher Dee
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233-1425

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

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

Karen A. Loebel
Deputy District Attorney
821 W. State St.
Milwaukee, WI 53233

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

Reginald L. Harris 63546
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2018AP1583-CRNM State of Wisconsin v. Reginald L. Harris (L.C. # 2016CF5440)

Before Kessler, Dugan 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).

Reginald L. Harris pled guilty as a repeat offender to three felonies: armed robbery and second-degree reckless injury by use of a dangerous weapon, both as a party to a crime; and possessing a firearm while a felon. For the conviction of armed robbery as a repeat offender, he faced maximum penalties of forty-six years of imprisonment and a \$100,000 fine. *See* WIS.

STAT. §§ 943.32(2) (2015-16),¹ 939.50(3)(c), 939.62(1)(c). For the conviction of second-degree reckless injury as a repeat offender, he faced maximum penalties of twenty-three years and six months of imprisonment and a \$25,000 fine. *See* WIS. STAT. §§ 940.23(2)(a), 939.50(3)(f), 939.62(1)(c), 939.63(1)(b). As to the conviction of possession of a firearm while a felon as a repeat offender, he faced maximum penalties of fourteen years of imprisonment and a \$25,000 fine. *See* WIS. STAT. §§ 941.29(1m)(a), 939.50(3)(g), 939.62(1)(b). The circuit court imposed: (1) a ten-year term of imprisonment for armed robbery, bifurcated evenly; (2) a twelve-year term of imprisonment for second-degree reckless injury by use of a dangerous weapon, bifurcated as seven years of initial confinement and five years of extended supervision; and (3) an eight-year term of imprisonment for possessing a firearm while a felon, bifurcated as three years of initial confinement and five years of extended supervision. The circuit court ordered Harris to serve the three sentences consecutive to one another and consecutive to a sentence he was already serving following revocation of his probation for a burglary conviction. He appeals.

Harris's appellate counsel, Attorney Carl W. Chesshir, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32 (2017-18). Harris did not file a response. We requested a supplemental no-merit report to address matters related to Harris's guilty pleas. Attorney Chesshir filed the supplemental no-merit report and an affidavit from Harris. Upon our independent review of the record, the no-merit reports, and Harris's affidavit, we accept the no-merit reports, relieve counsel of further representation of Harris, and summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21 (2017-18).

¹ All references to the Wisconsin statutes are to the 2015-16 version unless other noted.

According to the criminal complaint, two men entered L.T.'s home in Milwaukee, Wisconsin on November 19, 2016. One of the men, subsequently identified as Harris, carried a semi-automatic handgun. Harris fired the gun and seized \$1700 that was on L.T.'s table. L.T. struggled with Harris for control of the gun, and Harris then shot L.T. several times before L.T. fled from his home. The criminal complaint went on to allege that in 2015 Harris was convicted of burglary as a party to a crime and that the prior conviction remained of record and unreversed. A certified copy of the 2015 judgment of conviction was attached to the criminal complaint.

The State initially filed an information in this case charging Harris as a repeat offender with armed robbery and second-degree reckless injury by use of a dangerous weapon, both as a party to a crime, and with possessing a firearm while a felon. In an amended information, the State added a fourth charge, namely, intentionally violating a court order prohibiting contact with a co-actor in a felony matter. *See* WIS. STAT. § 941.39(1). The basis for the fourth charge was an allegation that Harris's accomplice in the instant case was also Harris's co-actor in the 2015 burglary, and that at sentencing in the burglary matter, the circuit court ordered Harris not to have contact with his co-actor during the four-year period of probation imposed.

In May 2017, Harris decided to resolve the instant case with a plea agreement. Pursuant to its terms, Harris pled guilty to the original three charges, and the State withdrew the amended information. Additionally, the State agreed to recommend a global disposition of twelve to fifteen years of initial confinement without specifying a recommended term of extended

supervision. The circuit court accepted Harris's guilty pleas and ordered a presentence investigation report (PSI).²

At sentencing, the State made the promised recommendation of twelve to fifteen years of initial confinement. The author of the PSI recommended an aggregate sentence of between twenty-six and thirty-two years of imprisonment. Harris did not make a specific recommendation but urged the circuit court to impose a shorter term of initial confinement than the State recommended. The circuit court imposed an aggregate, consecutive, evenly bifurcated thirty-year term of imprisonment and ordered Harris to pay \$2700 in restitution.³

In the no-merit report, appellate counsel maintained that Harris could not pursue an arguably meritorious challenge to his guilty pleas. We were unable, however, to determine from the record whether an argument for plea withdrawal would be wholly frivolous if grounded on a claim that the circuit court failed to comply with its statutory and common-law duties when accepting Harris's guilty pleas. See WIS. STAT. § 971.08 (2017-18); *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. We asked appellate counsel to file a supplemental no-merit report further addressing whether a motion for plea withdrawal would be arguably meritorious. Appellate counsel filed a supplemental no-merit report advising that he had discussed plea withdrawal with Harris and that Harris did not wish to pursue a motion for plea withdrawal regardless of whether it would have arguable merit. Cf. *State v. Deilke*, 2004 WI 104, ¶¶25-26, 274 Wis. 2d 595, 682

² The Honorable Jeffrey A. Wagner presided over the plea hearing and accepted Harris's guilty pleas.

³ The Honorable T. Christopher Dee presided over the sentencing hearing and entered the judgment of conviction.

N.W.2d 945 (reflecting that if a defendant successfully withdraws a guilty plea, any agreements between the parties for resolution of the case might be rescinded and the parties returned to the positions they occupied before they negotiated a plea agreement). Counsel also provided an affidavit from Harris confirming that he “did not want to pursue a plea withdrawal in [his] case,” that he waived any challenge to plea withdrawal based on alleged defects in the plea colloquy, and explaining his reasons for that decision. Accordingly, we do not further consider the issue of plea withdrawal.

We agree with appellate counsel’s conclusion that the circuit court properly exercised its sentencing discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court identified deterrence and protection of the public as the primary sentencing objectives and discussed appropriate factors that the circuit court viewed as relevant to achieving those objectives. *See id.*, ¶¶41-43. Moreover, none of the sentences exceeded the maximum term of imprisonment allowed by law, and the aggregate sentence was far less than the aggregate eighty-three and one-half years of imprisonment and \$150,000 in fines that Harris faced upon conviction. Harris therefore cannot mount an arguably meritorious claim that his sentences are excessive or shocking. *See State v. Mursal*, 2013 WI App 125, ¶26, 351 Wis. 2d 180, 839 N.W.2d 173.

Finally, we conclude that Harris could not pursue an arguably meritorious challenge to the \$2700 in restitution that the circuit court ordered him to pay. The PSI reflected that L.T. incurred out-of-pocket losses of approximately \$2750, exclusive of \$14,000 in medical bills. At sentencing, L.T. submitted a restitution worksheet requesting \$2700. Harris agreed that L.T. sought a reasonable amount of restitution and did not dispute the request. Under these circumstances, Harris constructively stipulated to \$2700 in restitution. *See State v. Leighton*,

2000 WI App 156, ¶¶55-56, 237 Wis. 2d 709, 616 N.W.2d 126. Accordingly, a challenge to the restitution order would be frivolous within the meaning of *Anders*.

Our independent review of the record does not disclose any other issue warranting discussion as a potential basis for appeal. We therefore accept the no-merit reports and relieve Attorney Chesshir of further representation of Harris.

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21 (2017-18).

IT IS FURTHER ORDERED that Attorney Carl. W. Chesshir is relieved of any further representation of Reginald L. Harris. *See* WIS. STAT. RULE 809.32(3) (2017-18).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals