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/I

January 15, 2020

To:

Hon. Ralph M. Ramirez
Circuit Court Judge
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Gina Colletti
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Ann Auberry
Rebholz & Auberry
1414 Underwood Ave., Ste. 400
Wauwatosa, WI 53213

Susan Lee Opper
District Attorney
515 W. Moreland Blvd., Rm. G-72
Waukesha, WI 53188-2486

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

Jeffrey L. Schultz 630412
Columbia Correctional Inst.
P.O. Box 900
Portage, WI 53901-0900

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

2018AP811-CRNM State of Wisconsin v. Jeffrey L. Schultz (L.C. #2016CF101)

Before Kessler, Dugan and Donald, 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).

Jeffrey L. Schultz appeals from a judgment, entered upon his ***Alford***[1] pleas, convicting him of first-degree reckless injury as an act of domestic abuse and resisting an officer causing a soft tissue injury or substantial bodily harm. Appellate counsel, Attorney Ann Auberry, has filed

[1] *See* ***North Carolina v. Alford***, 400 U.S. 25 (1970).

a no-merit report, pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2017-18).[2] Schultz was advised of his right to file a response, but he has not responded. Upon this court's independent review of the record, as mandated by ***Anders***, and counsel's report, we conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

On January 23, 2016, police were dispatched to a report of a domestic disturbance at the Country Springs Hotel in Waukesha. While en route, the dispatcher advised that the caller was hysterical and stating someone was trying to choke her mother. When the first officers entered the hotel, they were approached by a patron who reported a disturbance next to his room and pointed officers in the correct direction. The officers made their way to a room, outside of which stood multiple hotel staff members. Someone indicated that they had a key card and were trying to gain access, and that a staff member had observed a woman on the floor behind the door.

The officers knocked and announced their presence. A male voice, which sounded angry and hostile, screamed obscenities and said, "Come in and get me, I got something for you." The man, later determined to be Schultz, refused to open the door. Officers could also hear a woman moaning inside the room.

As officers continued to issue orders to Schultz, the door began to open; an officer approached with his weapon drawn and could see a woman on the floor. The officer pushed the door open enough to drag the "barely conscious" woman from the room. He asked her if Schultz owned any firearms, and she replied, "Many," though she was having some difficulty answering

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

questions due to her physical condition. Officers observed bruising on her legs and redness, swelling, and scratch marks on her throat and neck.

Officers continued to negotiate with Schultz, who came to the door. A taser was unsuccessfully deployed. Officer J.C. "attempted to decentralize [Schultz] in the hall" at which point another officer "attempted to ground stabilize [Schultz] by handcuffing him." One officer estimated Schultz to weigh over 600 pounds and to stand over six feet tall.

One officer attempted to deploy a taser again. This time, the taser connected with Schultz, but the cords fell across another officer's legs, causing that officer "to feel the full effect of the taser[.]" Another officer attempted to remove Schultz's arm from under his body, at which point J.C. was "screaming in pain that his leg was stuck" under Schultz. Officers could not immediately remove Schultz from J.C.'s leg, "causing much more extreme pain[.]" Schultz was eventually secured and transported for medical clearance. He continued to resist the officers and swear at them. He told the officers he weighed 700 pounds. J.C. had to be carried from the scene by other officers; several days later, he remained unable to put weight on his leg and was walking with crutches and a brace.

The female victim was identified as R.P., and she indicated that Schultz, her ex-husband, had "choked her out" and struck her multiple times. He had threated to kill her and her three children. Though they had been on a family outing earlier in the day, Schultz had gotten angry over one child's behavior. R.P. said that when she told Schultz that she and the children were going to get a different room, he became extremely upset and grabbed her by the throat, squeezing her until she could not breathe and slamming her head into the wall. The children were able to flee the room; the eldest called 911, despite Schultz's threats to kill her if she called

for help. The child told police about the assault against her mother in the hotel room, as well as prior abuse by Schultz in the home. R.P.'s doctor told her that Schultz "was extremely close to having snapped her neck" and that "it would have been quite easy for her to have died given the lack of oxygen and blood to her brain as a result of the injuries she sustained."

Schultz was charged with ten offenses: first-degree reckless injury as an act of domestic abuse; two counts of strangulation and suffocation as an act of domestic abuse; felony intimidation of a victim as an act of domestic abuse; felony intimidation of a witness as an act of domestic abuse; false imprisonment as an act of domestic abuse; resisting an officer causing a soft tissue injury or substantial bodily harm to the officer; misdemeanor battery as an act of domestic abuse; disorderly conduct as an act of domestic abuse; and resisting an officer.

Defense counsel raised a competency concern, though the evaluator determined that Schultz was competent. Schultz also asked to be evaluated for a plea of not guilty by reason of mental disease or defect, and that evaluator determined such a plea was unsupported. Schultz ultimately resolved his case by entering "***Alford***/no contest" pleas[3] to first-degree reckless injury as an act of domestic abuse and resisting an officer causing injury.

The presentence investigation report noted that Schultz had claimed R.P. planned to get him in trouble, lured him to the hotel, and had choked herself. At sentencing, Schultz denied he had ever threatened R.P. or her children, asserted that R.P. instigated the fight before police were called, and insinuated that she persuaded her child to call police with a fabricated story. The

[3] When a defendant enters an ***Alford*** plea, the defendant maintains his or her innocence while accepting the consequences of the charged offense.

circuit court imposed the maximum sentences: fifteen years of initial confinement and ten years of extended supervision for the reckless injury, and three years of initial confinement and three years of extended supervision for the resisting causing injury, to be served consecutively.

The first potential issue discussed in the no-merit report is whether the circuit court "complied with its obligation to establish Schultz's ***Alford*** pleas … were knowing, intelligent and voluntary." *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Schultz completed a plea questionnaire and waiver of rights form, *see* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987), in which he acknowledged that his attorney had explained the elements of the offenses; the applicable jury instructions were attached to the form. The form correctly identified the maximum penalties Schultz faced, and the form also listed the constitutional rights Schultz was waiving with his pleas. *See* ***Bangert***, 131 Wis. 2d at 262, 270. Schultz initialed next to each right listed.

The circuit court conducted a plea colloquy, as required by ***Bangert*** and WIS. STAT. § 971.08. It asked both parties why it should accept the ***Alford*** pleas. *See* ***State v. Garcia***, 192 Wis. 2d 845, 856, 532 N.W.2d 111 (1995) (circuit court has discretion in deciding whether to accept ***Alford*** pleas). It also asked the State for an offer of proof, as an ***Alford*** plea must be supported by "strong proof of guilt." *See* ***State v. Johnson***, 105 Wis. 2d 657, 663, 314 N.W.2d 897 (Ct. App. 1981). The State offered the complaint and testimony from a motion hearing[4] a few weeks prior; Schultz did not object to the State's reliance on that material. The circuit court

[4] The State had moved to admit R.P.'s statements at trial because she had moved out of state and it was unclear whether she would arrive to testify at trial. The circuit court found that the statements were made during an emergency but refrained from ruling further until the State actually attempted to admit specific statements in the course of trial.

further confirmed Schultz's understanding that the ***Alford*** pleas would have the same practical effect as a guilty plea. *See* ***Garcia***, 192 Wis. 2d at 858.

We observe that, during the plea colloquy, the circuit court neglected to "advise [Schultz] personally that the terms of the plea agreement, including a prosecutor's recommendations, are not binding on the court," a warning required by ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. The no-merit report notes that "there was no agreement other than both parties were free to argue for what they believed was an appropriate sentence" and that the circuit court did caution Schultz that it could impose the maximum penalties consecutively, so appellate counsel concludes "there is no basis to argue Schultz was misled into believing he would receive a specific recommendation from the State or [a specific] sentence from the court should the court accept his pleas."

A plea agreement can encompass more than just a sentence recommendation. Here, the agreement contemplated that Schultz would be allowed to enter ***Alford*** pleas, eight charges would be dismissed and read in, and that the parties would be free to argue the sentence. However, a court is not obligated to accept an ***Alford*** plea or the State's charging concessions any more than it is obligated to follow the parties' sentence recommendations. *See* ***Garcia***, 192 Wis. 2d at 856; ***Hampton***, 274 Wis. 2d 379, ¶32.

In any event, while the omission of the ***Hampton*** warning does present a *prima facie* ***Bangert*** violation, no issue of arguable merit arises from the defect. To withdraw a guilty plea after sentencing, a defendant must show that withdrawal is necessary to correct a manifest injustice. *See* ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court did ultimately, if reluctantly, accept the ***Alford*** pleas and charge concessions

contemplated, so Schultz was not affected by the defect in the colloquy and he cannot show that plea withdrawal is necessary to correct a manifest injustice. *See* ***State v. Johnson***, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 441; *see also* ***State v. Cross***, 2010 WI 70, ¶32, 326 Wis. 2d 492, 786 N.W.2d 64 ("[R]equiring an evidentiary hearing for every small deviation from the circuit court's duties during a plea colloquy is simply not necessary for the protection of a defendant's constitutional rights.").

Based on the foregoing, we are satisfied that the record establishes Schultz's pleas were knowing, intelligent, and voluntary. There is no arguable merit to a challenge to the pleas' validity.

The other issue addressed in the no-merit report is whether the circuit court erroneously exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and determine which objective or objectives are of greatest importance, *see* ***Gallion***, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public, and may consider several additional factors. *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the circuit court's discretion. *See* ***id.***

Here, we agree with the no-merit report's analysis and conclusion that "there is no meritorious claim for seeking to vacate [Schultz's] sentence" as an erroneous exercise of

discretion. As appellate counsel notes, the circuit court "clearly understood the sentence it was imposing [was] the maximum allowed by law," explained why it was making Schultz ineligible for the challenge incarceration and substance abuse programs, "outlined and applied the proper criteria in sentencing Schultz," and offered its reasons for imposing the sentence that it did. In particular, we note that the sentencing court explained:

> I must ensure the safety of the community, of others, and the only way to do that is to incapacitate Mr. Schultz, that is, to incarcerate him and prevent him from harming other people. This incident was so violent that his behavior, vis-à-vis other people, and the potential for violence and the lack of remorse which I have seen exhibited in interviews with the presentence writer and in court today, the propensity to blame everybody but himself, these things tell me he doesn't get it or doesn't understand his responsibility and the gravity of the offense here.
>
> So in light of all of those things, I'm left with incarceration. I believe that, in taking into account as I said the fact that there were charges dismissed, the fact of the violence, the level of that violence, the attitude exhibited by Mr. Schultz to the presentence writer and in the courtroom today, I think that the only sentence that I can impose is, given the tools that I have, a maximum sentence.

Our review of the record confirms that the circuit court appropriately considered relevant sentencing objectives and factors. Though the thirty-one-year sentence imposed was the maximum, it does not exceed the range authorized by law. *See* WIS. STAT. §§ 940.23(1)(a); 946.41(2r); 939.50(3)(d), (h); 973.13. In light of the sentencing factors articulated by the circuit court, all of which were proper considerations, the sentence imposed would not shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There would be no arguable merit to a challenge to the court's sentencing discretion.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Ann Auberry is relieved of further representation of Schultz 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