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DISTRICT III

January 22, 2020

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

2018AP813-CRNM State of Wisconsin v. Glennon M. Sechser (L. C. No. 2016CF240)

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 Glennon Sechser has filed a no-merit report, concluding there is no basis to challenge Sechser's convictions for two counts of repeated sexual assault of a child, and one count of intimidation of a victim, all as repeaters. Sechser responded, and counsel filed a supplemental no-merit report. We required counsel to file an additional supplemental no-merit report regarding a sentence credit issue, together with relevant documents from Sechser's

revocation proceedings. Upon consideration of these submissions and an independent review of the record, as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude that the judgment, as modified, may be summarily affirmed because there is no merit to any issue that could be raised on appeal.

This matter arose out of allegations that Sechser sexually abused his two stepdaughters, who were eleven and twelve years old at the time. Sechser was thereafter charged with two counts of repeated sexual assault of a child, lifetime supervision of serious sex offenders; two counts of incest with child by stepparent; and one count of intimidation of a victim. All counts were charged as repeaters. At the time of his arrest, Sechser was on extended supervision in Jackson County case No. 2008CF139. Sechser's supervision was subsequently revoked.

Sechser agreed to plead no contest to both repeated sexual assault counts and to the intimidation of a victim count pursuant to an amended Information. In exchange, the State agreed to recommend dismissing and reading in the remaining counts; amending the Information to delete the lifetime supervision requests on the sexual assault of a child counts; and capping the aggregate sentence recommendation at eight years' initial confinement and ten years' extended supervision, concurrent to Sechser's revocation sentence on another matter.

The circuit court imposed a sentence on each of the sexual assault charges of sixteen years' initial confinement and fourteen years' extended supervision, concurrent to each other and to any sentence Sechser was then serving. The court also imposed a three-month sentence on the intimidation of a victim count, concurrent to the other counts and any sentence Sechser was serving.

The no-merit report addresses potential issues regarding whether the pleas were knowingly, voluntarily, and intelligently entered; whether Sechser's trial counsel rendered effective assistance; whether the circuit court properly exercised its sentencing discretion; and whether the court properly awarded sentence credit. Upon our independent review of the record, we agree with counsel's description, analysis, and conclusion that any challenges to these issues would lack arguable merit, with the exception of sentence credit, which we modify as discussed below.

Prior to discussing sentence credit, however, we turn to matters raised in Sechser's response to the no-merit report. Sechser questions the adequacy of his appellate counsel's investigation prior to the submission of the no-merit report. Counsel's affidavit, attached to the supplemental no-merit report, outlines his review of case materials, and our independent review of the record discloses no issue of arguable merit in this regard.

Sechser also questions the qualifications of his trial counsel, asserting that "when running this attorney's name thru [sic] Lexis Nexis lawyer info search and Lois Law lawyer info search, his practice area is listed as personal injury and real estate no mention on criminal defence [sic]." The affidavit attached to the supplemental no-merit report establishes that trial counsel is certified to handle public defender cases and counsel is well versed in Wisconsin criminal law and procedure. Our independent review of the record discloses no issue of arguable merit in this regard.

Sechser also argues in his response that he did not understand the terms of the plea agreement due to his mental and emotional state, and the State breached the plea agreement because Sechser thought his sentence would be capped at eight years' initial confinement and

ten years' extended supervision. At sentencing, the circuit court imposed a sentence greater than recommended by either party, but the court had advised Sechser during the plea colloquy that the court was not limited by the parties' recommendations and could impose the maximum potential punishment allowable by law. That colloquy was buttressed by the plea questionnaire and waiver of rights form, which Sechser acknowledged he read and understood. The State correctly recited the terms of the plea agreement, including the State's sentencing recommendation, which were also correctly reflected on the plea questionnaire and its attachments. Furthermore, Sechser advised the court during the plea colloquy that he was not on any medications, and that his mental state did not "affect his ability to understand what we are doing here today." There is no arguable merit to this issue.

Sechser also contends his "appellate council [sic] and my trial councils [sic] lack to provide me the proper documents to my case has greatly hindered my ability to freely[,] voluntarily and intelligently make any decisions in either situation of plea or appeal …." However, the circuit court gave Sechser every opportunity to assure that he had sufficient time to review, discuss, and consider the discovery materials prior to accepting Sechser's plea, even offering to adjourn the plea hearing if Sechser so desired. In the end, Sechser stated on the record in open court that he had been given ample time and was ready to enter a plea. There is no arguable merit to this issue.

Sechser also argues that the circuit court failed to consider his character at sentencing. However, the court commented throughout the sentencing hearing regarding Sechser's character. The court noted that Sechser's lengthy history of criminal activity and undesirable behavior patterns "show[] that you have so many issues to deal with." It also noted Sechser had an

unwillingness to accept culpability for his actions, and the sexual assaults were particularly egregious, vicious and monstrous. There is no arguable merit to this issue.

Sechser also argues "I was informed I was to be placed on only a 15[-]year term for sex offender registry. I specifically asked my trial counsel to include this in his negotiations as part of any plea he brings to me …." As originally charged, the repeated sexual assault of a child counts (Counts 1 and 3) included lifetime supervision. As part of the plea negotiations, the State amended the Information to remove the lifetime supervision request from each count. During the plea colloquy, the circuit court asked Sechser about sex offender registration, and Sechser appeared to conflate sex offender registration with lifetime supervision. Prior to accepting the pleas from Sechser, the court discussed at length both lifetime supervision and sex offender registration, explaining the difference between the two matters and assuring that Sechser understood those concepts and their relation to his case. Sechser acknowledged he understood each prior to entering his pleas. There is no arguable to merit to this issue.

Turning now to sentence credit, Sechser argues in his response to the no-merit report that he is entitled to 594 days of sentence credit. Sechser fails to develop an argument in this regard, but it appears Sechser believes he is entitled to sentence credit from the date of his arrest to his sentencing in the present matter. Sechser is wrong. In ***State v. Davis***, 2017 WI App 55, ¶9, 377 Wis. 2d 678, 901 N.W.2d 488, we held consistent with WIS. STAT. § 304.072(4) (2017-18)[1] and our decision in ***State v. Presley***, 2006 WI App 82, 292 Wis. 2d 734, 715 N.W.2d 713:

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

> [W]hen an offender is revoked from supervision for committing a new crime and there is no reconfinement hearing on the revocation, and the offender is sentenced to concurrent terms on both the revocation sentence and the sentence for the new crime, the offender is entitled to sentence credit for custody served from the date of arrest to either the date of sentencing on the new crime or the date of transfer to prison, whichever occurs first.

Sechser was revoked and was received back into the Department of Corrections' (DOC) custody on the revocation prior to his sentencing in the present matter. Sechser is therefore not entitled to credit from the date of his arrest to the date of his sentencing on his new crime. Instead, Sechser is entitled to sentence credit from the date of his arrest to the date he was received back into DOC custody on his revocation proceeding. The fact that Sechser is not entitled to 594 days of sentence credit, however, does not answer the question of whether the circuit court properly awarded 94 days of sentence credit.

At the sentencing hearing in the present case, the district attorney stated:

> I would indicate for the record that he would get credit from the time he was taken into custody on this charge and placed on bond until his sentence was revoked in his previous case …. The defense counsel and I have discussed this matter as far as sentence credit is concerned. We are going to be researching the issue and provide a letter to the court recommending sentence—an appropriate sentence credit within 30 days of the date of this sentence.

However, shortly thereafter during the sentencing hearing, the district attorney continued:

> Judge, just to clarify for the record. I have done some calculations. I believe he is due to 94 days credit on this case, and [defense counsel], if he disagrees with that, he can contact me and we can correct that. I believe it's 94 days credit.

The district attorney did not discuss at the sentencing hearing how he calculated 94 days of credit. Defense counsel did not object to the 94 days of credit proposed by the district attorney. The circuit court then stated, "As for the 94 days credit, that's what we will indicate on the judgment of conviction, unless there is something sent in to amend it." Counsel subsequently

failed to seek to amend the judgment of conviction in that regard. Therefore, the issue of sentence credit was waived below, and any potential issue regarding sentence credit must proceed under the rubric of ineffective assistance of trial or appellate counsel. *See* ***Strickland v. Washington***, 466 U.S. 668 (1984).

In the no-merit report, counsel states that Sechser was given credit of 94 days, computed from March 21, 2016 (the date bond was set) until June 23, 2016 (when his extended supervision was revoked).[2] However, Sechser was arrested in this case on January 11, 2016, and placed in the Marathon County Jail. Sechser was returned to the Wisconsin State Prison system after revocation on the other matter on July 20, 2016. As a matter of law, Sechser is therefore entitled to 191 days of sentence credit. *See* ***Davis***, 377 Wis. 2d 678, ¶9. Sechser's counsel clearly performed deficiently by failing to object to the 94 days of credit argued by the prosecutor, and by failing to seek to amend the judgment of conviction to correct the amount of credit Sechser was due. In our error-correcting role, we therefore order that the judgment be modified to reflect sentence credit of 191 days. Upon remittitur, an amended judgment of conviction shall be entered to reflect the ordered modification.

Our review of the record discloses no other potential issues for appeal.

Therefore,

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[2] We note that an affidavit appended to the supplemental no-merit report averred Sechser's extended supervision was revoked by an order dated June 6, 2016. The decision and order revoking Sechser's extended supervision was also dated June 6, 2016. Counsel also averred "that the time from filing this case to revocation (and the commencement of sentence) in the earlier case is 'roughly 94 days.'"

IT IS ORDERED that the judgment of conviction is modified and, as modified, summarily affirmed and the cause remanded with directions. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Daniel Goggin II is relieved of further representing Glennon Sechser 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