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DISTRICT I

February 5, 2020

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

2018AP2345-CRNM State of Wisconsin v. Matthew Fitzgerald Jeffries
(L.C. # 2015CF2305)

Before Brash, P.J., Kessler and Dugan, 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).

Matthew Fitzgerald Jeffries appeals the judgment convicting him of possessing a firearm as a felon. *See* WIS. STAT. § 941.29(2)(a) (2015-16).¹ He also appeals the order denying his

¹ WISCONSIN STAT. § 941.29(2) was repealed by 2015 Wis. Act 109. Jeffries, however, was charged under § 941.29(2) prior to its repeal. The substance of the repealed subsection is now found in § 941.29(1m) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

postconviction motion. Jeffries' appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967).² Jeffries received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders*, we conclude that the judgment and order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The State filed a criminal complaint charging Jeffries with first-degree recklessly endangering safety, by use of a dangerous weapon, as a repeater and with possession of a firearm as a felon as a repeater. According to the complaint, on May 17, 2015, police officers responded to a shooting scene but did not find a victim. However, the police officers later located Jeffries in the emergency room at a hospital where he was treated for two gunshot wounds.

As part of their investigation, police officers reviewed surveillance footage of the scene and observed a person approach an occupied vehicle. The individual who approached the vehicle then appeared to have been shot by an unknown front seat passenger. The vehicle then drove away, and the individual who was shot raised his right arm several times in a manner consistent with having or firing a gun. The complaint alleged that the person appeared to be holding a shiny object in his right hand.

Jeffries acknowledged that he was shown on the surveillance footage approaching the occupied vehicle. Initially, he claimed that after he was shot, he raised his arm and began to

² The no-merit report was filed by Attorney Carly Cusack, who has been replaced by Assistant State Public Defender Dustin C. Haskell as Jeffries' appellate counsel.

point at the vehicle and that he was holding his phone, not a gun. During a follow-up interview, however, Jeffries said that after he was shot, an unknown person handed him the gun. Jeffries said that due to his level of intoxication, the shock of being shot, and the pain, he could not remember exactly what had happened.

The complaint included copies of certified judgments of conviction showing Jeffries was convicted in 2011 of possession of cocaine as a second or subsequent offense and in 2013 of forgery-uttering, both of which remained of record and unreversed.

Jeffries ultimately pled guilty to possessing a firearm as a felon. Pursuant to the plea agreement, the State agreed to move the circuit court to dismiss both the repeater enhancer attached to that charge and the charge of first-degree recklessly endangering safety, by use of a dangerous weapon, as a repeater. The plea agreement left both sides free to argue for whatever sentence they deemed appropriate.

The circuit court accepted Jeffries' plea and sentenced him to four years of initial confinement and four years of extended supervision to run consecutively to another sentence Jeffries was serving at the time.

Jeffries subsequently filed a postconviction motion seeking a determination of eligibility for the Substance Abuse Program. The circuit court explained that it found Jeffries ineligible for the program at the time of sentencing and additionally clarified that in exercising its discretion, the circuit court found Jeffries ineligible "based upon the totality of the circumstances presented, including his extensive prior record and failure on supervision," among other reasons. The circuit court denied the motion.

The no-merit report addresses the potential issues of whether Jeffries' plea was knowingly, voluntarily, and intelligently entered and whether the circuit court erroneously exercised its discretion during sentencing. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit and will not discuss them further. We note in passing that we see nothing in the record to suggest that counsel's performance was in any way deficient, and Jeffries has not alleged any other facts that would give rise to a manifest injustice. We therefore conclude that it would be frivolous to challenge Jeffries' plea and that the plea operated to waive all nonjurisdictional defects and defenses. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment and the order, and discharges appellate counsel of the obligation to represent Jeffries further in this appeal.

Upon the foregoing, therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See WIS. STAT. RULE 809.21.*

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved of further representation of Matthew Fitzgerald Jeffries 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