



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

March 2, 2020

To:

Hon. Joseph R. Wall
Circuit Court Judge
Safety Building, Rm. 313
821 W. State St.
Milwaukee, WI 53233

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

Christopher P. August
Assistant State Public Defender
735 N. Water Street, Ste. 912
Milwaukee, WI 53202-4116

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

Rasheed A. Whilters 576053
Oakhill Correctional Inst.
P.O. Box 938
Oregon, WI 53575-0938

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

2019AP1516-CRNM State of Wisconsin v. Rasheed A. Whilters (L.C. # 2017CF3906)

Before Brash, P.J., 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).

Rasheed A. Whilters appeals from a judgment of conviction for battery to a law enforcement officer, for which he received a sentence of three years' initial confinement and three years' extended supervision. His appellate counsel has filed a no-merit report pursuant to

WIS. STAT. RULE 809.32 (2017-18),¹ and *Anders v. California*, 386 U.S. 738 (1967). Whiter has filed a response to the no-merit report. See RULE 809.32(1)(e). Appellate counsel indicated that no supplemental no-merit report would be filed.² Upon consideration of these submissions and an independent review of the record as mandated by *Anders*, the judgment is summarily affirmed because we conclude that there is no arguable merit to any issue that could be raised on appeal. See WIS. STAT. RULE 809.21.

Whiter entered a guilty plea. The complaint describes the circumstances surrounding the crime as follows: Whiter was arrested for a domestic violence incident after he tried to kick in the door and gain entrance to the home of his children's mother. In the booking room of the police station, Whiter became argumentative. As an officer attempted to handcuff Whiter, Whiter punched the officer on the side of the head with a great amount of force. The officer suffered extreme pain. After Whiter was subdued with the help of other officers, Whiter said, "at least I'm getting revoked for a good reason now." The officer who was punched went to the hospital for his injury.

The no-merit report addresses the potential issues of whether Whiter's plea was knowingly, voluntarily, and intelligently entered and whether the sentence was the result of an erroneous exercise of discretion. This court is satisfied that the no-merit report properly analyzes the issues it raises as being without merit, and this court will not discuss them further. Additionally, although the maximum sentence was imposed, we cannot conclude that the

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

² The no-merit report was filed by Assistant State Public Defender Nicole M. Masnica. Assistant State Public Defender Christopher P. August subsequently substituted as counsel of record and filed the letter indicating that no supplement no-merit report would be filed.

sentence was excessive or unusual so as to shock public sentiment, given the sentencing court's view that it was a "terribly violent incident." See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

In his response to the no-merit report, Whiter's suggests that he was sentenced on false information. He points to four pieces of information. First, that he kicked down the door of his children's mother's residence. He asserts that "never happened" and he was not arrested or charged with that crime. Next, he asserts that he never said, "at least he was getting revoked for a good reason now." Third, he disputes information about a prior charge of domestic violence. At sentencing, the prosecutor indicated that in 2008, Whiter's was charged with misdemeanor battery as a domestic violence incident and that it was dismissed when the victim failed to appear for trial. Whiter's asserts that the prior case was dismissed because police discovered that he was the wrong man. Fourth, Whiter's disputes the prosecutor's description of the officer's injury caused by the punch.³ The prosecutor indicated that the officer had "some ringing in his ears following being punched in the head. He definitely had some swelling, some bruising and some soreness, but thankfully no fractures, no concussion, no permanent injuries." Whiter's asserts that the officer's medical records stated there was no bruising or scars.⁴

A defendant has a "due process right to be sentenced upon accurate information." *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. Whether a defendant has been denied the due process right to be sentenced on accurate information is a constitutional

³ The defense asked to proceed to sentencing right after the guilty plea was taken. The officer was notified but was unable to appear at the sentencing portion of the hearing.

⁴ No medical records were offered as evidence. The appellate record does not include any medical records.

question we review *de novo*. See *id.*, ¶9. To establish a denial of this right, the defendant must show both that the disputed information was inaccurate and that the sentencing court actually relied on the inaccurate information. See *id.*, ¶26. “Whether the circuit court ‘actually relied’ on ... incorrect information at sentencing, according to the case law, turns on whether the circuit court gave ‘explicit attention’ or ‘specific consideration’ to the inaccurate information, so that the inaccurate information ‘formed part of the basis for the sentence.’” *State v. Travis*, 2013 WI 38, ¶28, 347 Wis. 2d 142, 832 N.W.2d 491 (quoted source omitted).

Whiters cannot establish that he was sentenced on inaccurate information that he kicked down the door at the residence and was not arrested for that crime. The complaint recites that Whiters tried to gain access to the residence by kicking the door in. The sentencing court’s description of the crime at sentencing was that Whiters tried to kick the door down, not that he had been successful in doing so. Also, Whiters was being booked on a vandalism charge when he struck the officer. So he was, in fact, arrested for his behavior at the residence, although he ultimately was not charged for the domestic violence incident. Accordingly, inaccurate information was presented or relied on.

In reciting the complaint’s detailed description of the crime, the sentencing court repeated that after punching the officer, Whiters remarked that at least he was getting revoked for a good reason. Not only is the remark recited in the complaint, during the plea hearing, the prosecutor recited it when summarizing the circumstances of the crime. Whiters confirmed that the prosecutor’s recitation of the facts was substantially accurate. Further, by his guilty plea, Whiters forfeited the opportunity to challenge the truth of the evidence against him. A valid guilty plea forfeits all nonjurisdictional defects and defenses. *State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. Even if Whiters could establish that he never made the

remark, the sentencing court's mere recitation of it does not show actual reliance on it in determining his sentence. The driving force behind the sentence was the court's assessment that it was "a very, very serious act," which was exacerbated by the fact that it was committed against a police officer who was just trying to do his job, and that "sucker punching another human being ... is outrageous." The court did not express any negative inference about Whiter's remark about a good reason for revocation, or otherwise indicate that it had any bearing on the court's assessment of the violent nature of the crime.

In reviewing Whiter's prior criminal history, the sentencing court recited his arrest for a domestic violence related battery and then noted, "[t]hat was dismissed at apparently the request of the victim here." If this information is inaccurate, it is only because the sentencing court did not accept the prosecutor's explanation that the charge was dismissed because the victim failed to appear for trial. Rather, the court gave a different reason for dismissal, albeit not the reason Whiter advances—that the police realized they had the wrong man. The truth of the reason for the dismissal of the prior battery charge is not important because the mere recitation of the charge does not amount to actual reliance on it in determining the sentence. Although the court summarized that Whiter had numerous contacts with law enforcement, the assessment was based on his drug and traffic convictions, not the dismissed misdemeanor battery.

Turning to Whiter's claim that information about the officer's injury was inaccurate, we again determine that Whiter cannot establish actual reliance on the type of complaints reported by the officer after being punched. The sentencing court merely related that the officer was taken to the hospital for his injury and that the officer suffered extreme pain. Focusing on the violent and outrageous nature of the punch, the court did not consider any medical description of the officer's injury or details other than extreme pain caused by the punch.

In sum, we conclude there would be no arguable merit to a claim that Whiter was sentenced on the basis of inaccurate information. Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Whiter further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Christopher P. August is relieved from further representing Rasheed A. Whiter 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