



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 III

April 14, 2020

To:

Hon. James A. Morrison
Circuit Court Judge
1926 Hall Ave.
Marinette, WI 54143

Timothy T. O'Connell
O'Connell Law Office
403 S. Jefferson St.
Green Bay, WI 54301

Sheila Dudka
Clerk of Circuit Court
Marinette County Courthouse
1926 Hall Ave.
Marinette, WI 54143

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

DeShea D. Morrow
District Attorney
1926 Hall Ave.
Marinette, WI 54143

Melvin Waldrop 115491
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2018AP1545-CRNM State of Wisconsin v. Melvin Waldrop (L. C. No. 2017CF172)

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 Melvin Waldrop has filed a no-merit report concluding there is no basis to challenge Waldrop's convictions for battery and physical abuse of a child—intentionally causing bodily harm. Waldrop was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we

conclude there is no merit to any issue that could be raised on appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2017-18).¹

A criminal complaint alleged Waldrop was upset that his significant other was cheating on him with another woman—the next-door neighbor—and he reacted impulsively and violently, causing harm to his significant other. Waldrop also physically assaulted and injured his significant other’s ten-year-old special needs grandson. When the next-door neighbor attempted to intervene, Waldrop told her to “Mind your own fucking business before I come after you next.” Waldrop then yelled at the next-door neighbor that she was “a fucking liar and a fucking cunt,” and “got in [her] face in an attempt to physically intimidate her.” The next-door neighbor then called 911.

Waldrop was charged with one count of battery; two counts of disorderly conduct; one count of physical abuse of a child—intentionally causing bodily harm; and one count of felony intimidation of a witness; all as repeaters.² Waldrop pleaded no contest to the battery count and the physical abuse of a child count (both without the repeater enhancers), and the remaining counts were dismissed and read in. The circuit court imposed consecutive sentences consisting of three years’ initial confinement and three years’ extended supervision on the physical abuse charge, and nine months’ jail on the battery charge.

The no-merit report addresses potential issues regarding whether Waldrop’s pleas were knowingly, voluntarily, and intelligently entered; and whether the circuit court properly

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

² Waldrop had twenty-four separate criminal convictions.

exercised its sentencing discretion. Upon our independent review of the record, we agree with counsel's description, analysis, and conclusion that any challenge to these issues would lack arguable merit, and we will not further address them.

Subsequent to the filing of the no-merit report, Waldrop, pro se, filed a motion in the circuit court for sentence modification, challenging alleged discrepancies in the presentence investigation report (PSI). The court properly denied the motion. As the court noted, Waldrop was specifically asked at the sentencing hearing if he and his lawyer had reviewed the PSI, and the court was advised "we have no factual corrections [Y]our [H]onor." Moreover, Waldrop conceded during the plea colloquy that the court could use the facts in the complaint as a factual basis to support the convictions. Waldrop therefore waived any challenge based on the grounds asserted in his sentence modification motion, and accordingly such challenge would lack arguable merit.

Furthermore, any suggestion in Waldrop's pro se motion that he was denied due process or effective representation "when he was sentenced on the basis of incorrect information" would also lack any arguable merit. A no-merit report is an approved method by which appointed counsel discharges his or her duty of representation. *State ex rel. Flores v. State*, 183 Wis. 2d 587, 605-06, 516 N.W.2d 362 (1994). We have concluded there is no arguable merit to further postconviction or appellate proceedings, and our decision accepting the no-merit report and

discharging counsel of any further representation rests on the conclusion that counsel provided the required level of representation and that no issues of arguable merit exist.³

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

Therefore,

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

IT IS FURTHER ORDERED that attorney Timothy O’Connell is relieved of further representing Melvin Waldrop 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

³ Although not addressed in the no-merit report, the COMPAS risk assessment was mentioned during sentencing arguments, but the record shows it was not “determinative” of the sentence imposed. *See State v. Loomis*, 2016 WI 68, ¶¶98-99, 371 Wis. 2d 235, 881 N.W.2d 749. Any challenge to the sentence based on COMPAS would therefore lack arguable merit.