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March 30, 2021

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

2019AP1445-CRNM	State of Wisconsin v. Charlo Dewaune Hulbert (L.C. # 2016CF2166)
2019AP1446-CRNM	State of Wisconsin v. Charlo Dewaune Hulbert (L.C. # 2016CF5230)

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

In these consolidated appeals, Charlo Dewaune Hulbert appeals his convictions for being a felon in possession of a firearm, disorderly conduct (with the domestic abuse surcharge), and

intimidating a victim in furtherance of a conspiracy. *See* WIS. STAT. §§ 941.29(1m)(a), 947.01(1), 973.055(1), 940.45(4) (2015-16).[1] He also appeals from an order denying his postconviction motion to withdraw his guilty pleas. Hulbert's appellate counsel filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32.[2] Hulbert filed a response. We have independently reviewed the record, the no-merit report, and the response, as mandated by ***Anders***. We conclude that there is no issue of arguable merit that could be pursued on appeal. Therefore, we summarily affirm.

Hulbert was charged with three crimes in connection with a January 2016 incident at the home of his child's mother. According to the criminal complaint, Hulbert went to the woman's home to pick up their child, displayed a gun, hit the woman with the gun multiple times, and then fled. Later that year, while Hulbert was in jail awaiting trial, he spoke on the phone with the woman and with others about her, indicating the woman should take action to get the charges against him dropped. Hulbert was subsequently charged with two intimidation crimes related to those phone calls.

The case proceeded to trial. After the jury selection process began, Hulbert entered into a plea agreement with the State. In exchange for his guilty pleas to three counts (without the previously charged habitual criminality enhancers), two other counts were dismissed and read in. In addition, the State agreed not to issue any new intimidation charges related to additional phone

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

[2] The no-merit report was filed by Attorney Kaitlin A. Lamb. On December 8, 2020, Attorney Jorge R. Fragoso was substituted as counsel for Hulbert and now represents Hulbert in these appeals.

calls Hulbert allegedly placed from the jail, and both sides were free to argue for an appropriate sentence.

Hulbert completed a written guilty plea questionnaire. The trial court conducted a plea colloquy with Hulbert and accepted his guilty pleas.[3] Toward the end of the plea hearing, the State asked the trial court to confirm with Hulbert that he was aware that the firearm possession charge carried a mandatory minimum sentence. The trial court briefly discussed that with trial counsel and Hulbert, but it did not state on the record that the minimum sentence was three years.

At sentencing, the State urged the trial court to impose a total of eight years of initial confinement and six years of extended supervision for the two felonies, while trial counsel argued for three years of initial confinement, consistent with the mandatory minimum on the firearm possession count. The trial court sentenced Hulbert to four years of initial confinement and three years of extended supervision for the firearm count. It imposed a concurrent sentence of ninety days in House of Correction for the disorderly conduct count. Finally, it imposed a consecutive sentence of one year of initial confinement and two years of extended supervision for the intimidation count.

Represented by postconviction/appellate counsel, Hulbert moved to withdraw his guilty pleas on three grounds: (1) he did not know there was a three-year mandatory minimum for the firearm possession charge; (2) he did not understand the conspiracy element for the felony intimidation charge; and (3) there was an insufficient factual basis to support the felony

[3] The Honorable Cynthia Mae Davis accepted Hulbert's guilty pleas and sentenced him.

intimidation charge. The trial court conducted an evidentiary hearing on the first two issues at which both trial counsel and Hulbert testified.[4] The trial court explicitly found that trial counsel was more credible than Hulbert, that Hulbert had been aware of the three-year mandatory minimum, and that Hulbert understood the conspiracy element of the intimidation crime. The trial court also found that the facts in the criminal complaint—which the defense said could be used as the basis for Hulbert's guilty plea at the plea hearing—supported the conspiracy conviction. These appeals follow.

The detailed no-merit report addresses two issues: (1) whether Hulbert's plea was intelligently, knowingly, and voluntarily entered; and (2) whether the trial court erroneously exercised its sentencing discretion. The no-merit report thoroughly discusses those issues, including references to relevant statutes, case law, transcripts, and other court documents. This court is satisfied that the no-merit report properly analyzes the issues it raises.

With respect to Hulbert's guilty pleas, the no-merit report analyzes the postconviction proceedings, concluding that there would be no arguable merit to challenging the trial court's credibility assessments and factual findings concerning Hulbert's knowledge of the mandatory minimum and the conspiracy element.[5] *See* ***State v. Peppertree Resort Villas, Inc.***, 2002 WI App 207, ¶19, 257 Wis. 2d 421, 651 N.W.2d 345 ("When the [trial] court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and the weight to be given to each witness's

[4] The Honorable David Feiss conducted the evidentiary hearing and denied Hulbert's postconviction motion.

[5] As noted, Hulbert's postconviction motion alleged three reasons why he should be allowed to withdraw his guilty pleas based on alleged deficiencies of the plea hearing. This court has reviewed the entire plea hearing and has not identified any other bases to seek postconviction relief. *See* WIS. STAT. § 971.08; ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14; ***State v. Bangert***, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986).

testimony."); ***State v. Taylor***, 2013 WI 34, ¶25, 347 Wis. 2d 30, 829 N.W.2d 482 (holding that when considering whether a defendant's plea was knowingly, intelligently, and voluntarily entered, the appellate court "accepts the [trial] court's findings of historical or evidentiary facts unless they are clearly erroneous") (citation omitted)).

In his response to the no-merit report, Hulbert argues that the trial court's findings were clearly erroneous, noting that the guilty plea questionnaire did not mention the mandatory minimum sentence and that trial counsel acknowledged he did not specifically review the conspiracy jury instruction with Hulbert. We conclude that Hulbert has not raised an issue of arguable merit. The facts that Hulbert raises were addressed in the trial court. After conducting the evidentiary hearing, the trial court found that trial counsel discussed both issues with Hulbert, rejecting Hulbert's testimony to the contrary. Because trial counsel's testimony—which the trial court was entitled to accept—provides support for the trial court's findings, there would be no arguable merit to challenging those findings in a merit appeal. *See* ***Taylor***, 347 Wis. 2d 30, ¶25.

Appellate counsel further concludes that there would be no arguable merit to appealing the trial court's determination that there was a factual basis for the conspiracy element of the intimidation charge. We agree with appellate counsel's analysis of this issue. The facts in the complaint to which the defense stipulated provided a factual basis for that element. *See* ***State v. Black***, 2001 WI 31, ¶16, 242 Wis. 2d 126, 624 N.W.2d 363 (holding that "a factual basis for a plea exists if an inculpatory inference can be drawn from the complaint or facts admitted to by the defendant even though it may conflict with an exculpatory inference elsewhere in the record and the defendant later maintains that the exculpatory inference is the correct one"); ***State v. Smith***, 202 Wis. 2d 21, 25, 549 N.W.2d 232 (1996) (recognizing that "in the context of a negotiated guilty

plea," the trial court "need not go to the same length to determine whether the facts would sustain the charge as it would where there is no negotiated plea") (citation omitted)).

We turn to the sentencing. The no-merit report addresses the sentences that were imposed, providing citations to the sentencing transcript and analyzing the trial court's compliance with ***State v. Gallion***, 2004 WI 42, ¶¶40-43, 270 Wis. 2d 535, 678 N.W.2d 197. Appellate counsel concludes that there would be no arguable merit to assert that the trial court erroneously exercised its sentencing discretion, *see* ***id.***, ¶17, or that the sentence was excessive, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with these assessments. The trial court considered the requisite sentencing factors and explained its sentencing decisions. Further, the trial court imposed sentences totaling less than half of what could have been imposed, and we discern no erroneous exercise of discretion. *See* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449 ("A sentence well within the limits of the maximum sentence is unlikely to be unduly harsh or unconscionable.").

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

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Jorge R. Fragoso is relieved from further representing Charlo Dewaune Hulbert in these appeals. *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