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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:

2020AP1318-CRNM State of Wisconsin v. Damonta T. Goode (L.C # 2016CF2594)

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).

Damonta T. Goode appeals from a judgment convicting him of one count of felony bail jumping and five counts of fleeing or eluding a police officer, causing property damage. His appellate counsel, Vicki Zick, has filed a no-merit report pursuant to WIS. STAT. RULE

809.32 (2019-20), and *Anders v. California*, 386 U.S. 738 (1967).¹ Goode 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 summarily affirm the judgment because there is no arguable merit to any issue that could be pursued on appeal. *See* WIS. STAT. RULE 809.21.

The charges against Goode stemmed from an incident that occurred on June 12, 2016, in which Goode and two others stole a vehicle leased to Atlas Copco North America, LLC, and proceeded to lead police officers on a high speed chase, striking multiple vehicles along the way. The chase ended when Goode, the driver, crashed the stolen vehicle into a parked vehicle. The State charged Goode with two counts of being a felon in possession of a firearm; one count of felony bail jumping; five counts of fleeing or eluding a police officer, causing damage to property; and one count of operating a motor vehicle without the owner's consent. Goode pled guilty to one count of felony bail jumping and five counts of fleeing or eluding a police officer, causing damage to property. The remaining charges were dismissed.

At sentencing, the State informed the circuit court that “restitution is going to be a bigger issue,” necessitating a separate restitution hearing. The court sentenced Goode to three years of initial confinement and three years of extended supervision on the bail jumping charge, and three years of initial confinement and three years of extended supervision on all of the fleeing charges, to run consecutive to one another. The court also set a date for a restitution hearing.

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

The matter subsequently proceeded to a restitution hearing, where Goode's counsel waived Goode's appearance. Four victims of the property damage testified at the hearing: (1) M.H. sought \$1733 in restitution for the amount paid on a deposit for a new vehicle and a doctor's bill; (2) S.H. sought \$1700 in restitution for the amount paid on an insurance payment and deductible; (3) S.T. sought \$20,821 for damage caused to the stolen vehicle on behalf of his employer, Atlas Copco North America, LLC; and (4) J.K. sought \$8026.26 for the value of tools (as of the date of the hearing) he owned that were in the stolen vehicle and were either lost or damaged as a result of the incident. Goode's counsel stipulated to all of the restitution amounts. The court subsequently ordered restitution in the stipulated amounts.

Goode, by new counsel, filed a motion for postconviction relief arguing that his previous counsel was ineffective for waiving Goode's appearance at the restitution hearing and for stipulating to the restitution requests without Goode's consent. The motion also alleged that counsel was ineffective for failing to raise the issue of Goode's inability to pay over \$30,000 in restitution, failing to challenge certain requests, and failing to have Goode testify. The postconviction court granted the motion and ordered a new restitution hearing.

Goode was present at the new restitution hearing, where two of the four victims testified. J.C. again testified that his personal work tools, which were in the stolen vehicle, were either lost or damaged during the incident. J.C. stated that the value of the tools at the time of the incident (as opposed to the date of the hearing) was \$7274.12. M.H. testified that she was in her 2012 Nissan Sentra when Goode stuck her. M.H. testified that she sought restitution for a doctor's bill in the amount of \$196.14, and for a down payment she made towards a new car in the amount of \$1500. The State informed the circuit court that M.H. was actually entitled to the value of the

Nissan Sentra at the time of the incident. The State stated that the approximate Kelly Blue Book value of M.H.'s vehicle was \$6900.

Goode, through counsel, stipulated that the Kelly Blue Book value of the Nissan Sentra was between \$5041 and \$6726 at the time of the incident. Counsel also informed the circuit court that Goode was twenty-one years old as of the date of the hearing and had no children, no work history, no bank account, and no assets. Counsel stated that Goode worked nine hours a week in prison and earned nineteen cents per hour, rendering Goode unable to pay the restitution amounts sought.

The circuit court agreed that Goode would be unlikely to “make a substantial dent in the restitution” while incarcerated, but noted that Goode also had to complete twelve years of extended supervision, during which he could work towards making the restitution payments. Based on the court’s estimated calculations, the court determined that Goode would be able to make that substantial dent while on extended supervision. Finding that the State met its burden, the court awarded J.K. \$7247.12 for the cost of his lost and damaged tools. The court also awarded M.H. \$5237.14, comprising of the lowest Kelly Blue Book estimate of the value of M.H.’s vehicle at the time of the incident, as well as her medical expense.

The no-merit report addresses whether there would be arguable merit to a challenge of the circuit court’s restitution order. The report addresses the court’s exercise of discretion, the factors the court must consider, the testimony of the victims, and Goode’s ability to pay.

“The determination of the amount of restitution to be ordered (and thus whether a victim’s claim should be offset or reduced for any reason) is reviewed under the erroneous exercise of discretion standard.” *State v. Longmire*, 2004 WI App 90, ¶16, 272 Wis. 2d 759,

681 N.W.2d 534 (emphasis omitted). We will affirm an award if the court applied a correct legal standard, logically interpreted the facts, and used a rational process to reach a reasonable conclusion. *See id.* As the fact finder in a restitution hearing, the circuit court is “free to accept and reject evidence and to give accepted evidence such weight as it desires.” *See State v. Boffer*, 158 Wis. 2d 655, 663, 462 N.W.2d 906 (Ct. App. 1990). We accept the factual findings that are part of a discretionary decision unless they are clearly erroneous. *See State v. Holmgren*, 229 Wis. 2d 358, 366, 599 N.W.2d 876 (Ct. App. 1999).

WISCONSIN STAT. § 973.20(1r) requires a circuit court to order full or partial restitution unless it “finds substantial reason not to do so and states the reason on the record.” In doing so, § 973.20(13)(a) directs a court to consider:

1. The amount of loss suffered by any victim as a result of a crime considered at sentencing.
2. The financial resources of the defendant.
3. The present and future earning ability of the defendant.
4. The needs and earning ability of the defendant’s dependents.
5. Any other factors which the court deems appropriate.

At the restitution hearing, the State presented evidence of the financial injuries the victims sustained as a result of Goode’s crimes. Goode’s counsel argued that Goode lacked the ability to pay restitution. Counsel informed the circuit court of Goode’s lack of financial resources, his limited earning ability, and his lack of dependents and assets. In considering all of the evidence and the information put forth by Goode’s counsel, the court determined that the victims’ injuries were reasonably incurred as a result of Goode’s actions. The court also evaluated Goode’s ability to make restitution payments once released on extended supervision.

The court acted within its discretion. Therefore, having reviewed the testimony and the court's analysis, we conclude there would be no merit to challenge the court's restitution order.

Our complete and independent review of the record discloses no other potential issues of arguable merit. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Goode further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Vicki Zick is relieved from further representing Damonta T. Goode 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