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May 11, 2021

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

2020AP1364-CRNM State of Wisconsin v. Rickey L. Whitelow (L.C. # 2018CF6052)

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).

Rickey L. Whitelow pled guilty as a habitual offender to two felonies: second-degree recklessly endangering safety; and operating a motor vehicle to flee an officer, resulting in damage to the property of another person (fleeing resulting in property damage). At sentencing, he faced maximum penalties of fourteen years of imprisonment and a \$25,000 fine for the former offense, and ten years of imprisonment and a \$10,000 fine for the latter. *See* WIS. STAT. §§ 941.30(2),

346.04(3), 346.17(3)(b), 939.50(3)(g)-(h), 939.62(1)(b) (2017-18).¹ For second-degree recklessly endangering safety, the circuit court imposed a seven-year term of imprisonment bifurcated as four years of initial confinement and three years of extended supervision. For fleeing resulting in property damage, the circuit court imposed an evenly bifurcated six-year term of imprisonment. The circuit court ordered Whitelow to serve the two sentences concurrently with each other but consecutively to the sentence that he was already serving. The circuit court found Whitelow eligible for the challenge incarceration program and the Wisconsin substance abuse program and set restitution at zero. He appeals.

Appellate counsel, Attorney Katie Babe, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Whitelow filed a response. Upon consideration of the no-merit report and Whitelow's response, and upon an independent review of the record as mandated by *Anders*, we conclude that no arguably meritorious issues exist for an appeal. Therefore, we summarily affirm. See WIS. STAT. RULE 809.21.

According to the criminal complaint, two City of Milwaukee police officers were on patrol in a marked squad car early on the morning of December 22, 2018, when they saw a Buick LaCrosse traveling at approximately seventy miles per hour in the 2800 block of Capitol Drive. The officers activated their patrol car's lights and sirens as a signal for the Buick to stop, but the Buick's speed increased to over 100 miles per hour. The officers pursued the Buick for more than eleven miles while it disregarded red lights and stop signs. The pursuit ended when the Buick crashed into a tree, causing extensive damage to the Buick. The driver, subsequently identified as

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

Whitelow, sustained injuries in the crash, as did his two passengers. The officers determined that the Buick had been stolen during a burglary earlier in the month and that the Buick's owner had not consented to anyone driving it on December 22, 2018. The officers further determined that in 2016, Whitelow was convicted of burglary and operating a motor vehicle without the owner's consent. The State charged Whitelow with three crimes as a habitual offender: operating a motor vehicle without the owner's consent as a second or subsequent offense; second-degree recklessly endangering safety; and fleeing resulting in property damage.

Whitelow decided to resolve the charges with a plea agreement. In exchange for pleading guilty as a habitual offender to second-degree recklessly endangering safety and to fleeing resulting in property damage, the State agreed to recommend a substantial prison sentence and to move to dismiss and read in the remaining charge for sentencing purposes. The circuit court accepted Whitelow's guilty pleas, and the matters proceeded immediately to sentencing.

The no-merit report addresses the potential issues of whether Whitelow entered his guilty pleas knowingly, intelligently, and voluntarily, and whether the circuit court properly exercised its sentencing discretion. This court is satisfied that appellate counsel properly analyzed these issues, and we agree with appellate counsel that further pursuit of these issues would lack arguable merit. Additional discussion of these issues is not warranted.

Whitelow asserts in his response to the no-merit report that he has an arguably meritorious basis to seek sentence modification because he has used his time in prison to get a high school equivalency degree and, more generally, to change his life. While Whitelow's efforts are commendable, progress in rehabilitation does not justify sentence modification. *See State v.*

Kluck, 210 Wis. 2d 1, 7-9, 563 N.W.2d 468 (1997). Accordingly, further pursuit of this issue would be frivolous within the meaning of *Anders*.

Our independent review of the record does not disclose any other potential issues for appeal. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Katie Babe is relieved of any further representation of Rickey L. Whitelow. *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