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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

October 19, 2021

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Tyshawn I. Combs 687701
Oneida County Jail
2000 E. Winnebago St.
Rhineland, WI 54501

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

2020AP2133-CRNM State of Wisconsin v. Tyshawn I. Combs (L.C. # 2019CF787)

Before Donald, 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).

Tyshawn I. Combs appeals a judgment convicting him of two felonies. Attorney Mark A. Schoenfeldt was appointed to represent Combs. He filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),¹ and *Anders v. California*, 386 U.S. 738 (1967). Combs responded to the report. Attorney Schoenfeldt then filed a supplemental no-merit report. Combs again responded. After considering the no-merit reports and the responses, and after conducting

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

an independent review of the record as mandated by *Anders*, we conclude that there are no issues of arguable merit that could be raised on appeal. *See* WIS. STAT. RULE 809.21. Therefore, we affirm.

Combs was driving his car at a high speed when he crashed, hitting the median. His girlfriend, who was in the front passenger seat, sustained severe head injuries and died from her injuries shortly thereafter. Their five-month-old daughter, who was in the back seat, was injured. Pursuant to a plea agreement, Combs pled guilty to one count of second-degree reckless homicide and one count of second-degree reckless injury causing great bodily harm. The circuit court sentenced him to thirteen years of initial confinement and five years of extended supervision.

The no-merit report first addresses whether there would be arguable merit to a claim that Combs' guilty pleas were not knowingly, intelligently, and voluntarily entered. The circuit court conducted a colloquy that conformed to the strictures of WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). Moreover, prior to entering his pleas Combs reviewed a plea questionnaire and waiver of rights form with his attorney, which had jury instructions attached listing the elements of the crimes. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (stating that the court may rely on a plea questionnaire and waiver of rights form in assessing the defendant's knowledge about the rights he or she is waiving). Combs acknowledged that the criminal complaint provided a factual basis for the convictions. Therefore, there would be no arguable merit to an appellate challenge to Combs' pleas.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court erroneously exercised its sentencing discretion. The sentencing hearing took place over two days, during which the circuit court heard testimony from family members of Combs and the victims. The record establishes that the circuit court carefully considered the general objectives of sentencing and the appropriate sentencing factors, applied the factors to the facts of this case, and reached a reasonable sentencing decision. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (stating that the court must identify the factors it considered and explain how those factors fit the objectives and influenced its sentencing decision). There would be no arguable merit to a challenge to the court's sentencing discretion.

The no-merit report next addresses whether Combs was denied his constitutional right to the effective assistance of counsel. A defendant receives constitutionally ineffective assistance of trial counsel if counsel performs deficiently and counsel's deficient performance prejudices the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We agree with the no-merit report's conclusion that the record reveals no errors by trial counsel. Trial counsel effectively advocated on behalf of her client. There would be no arguable merit to a claim that Combs received ineffective assistance of trial counsel.

Combs' responses and the supplemental no-merit report address whether Combs was properly convicted of second-degree reckless injury, causing great bodily harm, with regard to his five-month-old daughter. Combs' daughter was strapped into an infant car seat when the crash occurred, but her car seat was not secured to the car with a seat belt. She was thrown from the car in her car seat and remained strapped into her car seat when she landed. She had a mild brain hematoma that did not require further treatment and she sustained a concussion.

A person is guilty of second-degree reckless injury causing great bodily harm if the person “recklessly causes great bodily harm to another human being.” WIS. STAT. § 940.23(2)(a). “Great bodily harm” is “bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss of impairment of the function of any bodily member or organ **or other serious bodily injury.**” WIS. STAT. § 939.22(14) (emphasis added).

Combs’ argument is without arguable merit for several reasons. Turning first to the facts of this case, Combs’ daughter suffered both a concussion and a brain hematoma, not just a concussion. As a factual matter, she sustained a serious bodily injury within the meaning of WIS. STAT. § 939.22(14). Turning to the law, Combs is relying on a general statutory definition that does not apply to the crime to which he pled guilty. He pled guilty to second-degree reckless injury causing great bodily harm. *See* WIS. STAT. 940.23(2)(a). There is no lesser-included version of that crime that applies when the victim is less seriously injured, as Combs is arguing here. Moreover, Combs pled guilty to the crime, so he has waived his right to raise this argument. *See State v. Asmus*, 2010 WI App 48, ¶3, 324 Wis. 2d 427, 782 N.W.2d 435 (a guilty plea waives all non-jurisdictional arguments and defenses, including constitutional claims). Therefore, there would be no arguable merit to this claim.

Our review of the record discloses no other potential issues for appeal. Accordingly, we accept the no-merit report, affirm the judgment of conviction, and discharge appellate counsel of the obligation to represent Combs.

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 Mark A. Schoenfeldt is relieved from further representing Combs 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