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DISTRICT IV

November 18, 2021

To:

Hon. Wendy J.N. Klicko
Circuit Court Judge
Electronic Notice

Carrie Wastlick
Clerk of Circuit Court
Sauk County Courthouse
Electronic Notice

Michael Xavier Albrecht
Electronic Notice

Thomas Brady Aquino
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Winn S. Collins
Electronic Notice

Justin M. Shaske 511252
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

2020AP949-CRNM State of Wisconsin v. Justin M. Shaske (L.C. #2018CF367)

Before Blanchard, P.J., Graham, and Nashold, 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).

Justin M. Shaske appeals a judgment entered upon his no-contest pleas to the following three offenses: attempting to take a vehicle without the owner's consent by use or threat of force, while using a dangerous weapon; driving or operating a motor vehicle without the owner's consent; and attempting to flee or elude an officer. Shaske's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),¹ and *Anders v. California*, 386 U.S.

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

738 (1967). Shaske received a copy of the report, was advised of his right to file a response, and elected not to do so. Upon consideration of the no-merit report and our independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal.

Shaske was originally charged in a thirteen-count complaint with the following offenses: attempting to take a vehicle without the owner's consent by use or threat of force, while using a dangerous weapon (count one); negligent handling of a weapon (count two); two counts of obstructing an officer (counts three and five); carrying a concealed knife (count four); driving or operating a motor vehicle without the owner's consent (count six); attempting to flee or elude an officer (count seven); operating while revoked (count eight); possessing drug paraphernalia (count nine); three counts of felony bail jumping (counts ten through twelve); and misdemeanor bail jumping (count thirteen).

Pursuant to a plea agreement, Shaske pled no contest to counts one, six, and seven; the other ten counts were dismissed and read in. The State agreed not to file additional charges. In terms of sentencing, the parties would be free to argue and they requested the preparation of a presentence investigation report (PSI). Shaske also filed an alternative PSI and a sentencing memorandum. At sentencing, the circuit court imposed an aggregate bifurcated sentence totaling ten and one-half years, with six years of initial confinement followed by four and one-half years of extended supervision.²

² Specifically, on count one, Shaske was sentenced to five years of initial confinement followed by two and one-half years of extended supervision. On count six, Shaske was sentenced to one year of initial confinement followed by two years of extended supervision, to run consecutive to count one. On

(continued)

Appellate counsel's no-merit report addresses whether Shaske's no-contest pleas were knowing, intelligent and voluntary; whether there was a factual basis for the pleas; and whether the circuit court properly exercised its discretion at sentencing. We are satisfied that the no-merit report properly analyzes each of these issues as having no arguable merit.³

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

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

count seven, Shaske was sentenced to one year of initial confinement followed by two years of extended supervision, to run concurrent with count six but consecutive to count one.

³ Although not discussed in the no-merit report, there is an apparent ambiguity in the statutes about how to calculate the maximum penalty for an attempted Class E felony with the applicable five-year penalty enhancer. *See* § 939.32(1g)(b)1. and (1m). The circuit court informed Shaske that the maximum penalty on count one was ten years. Citing WIS. STAT. §§ 943.23(1r) (the completed offense, a Class E felony), 939.32 (attempt modifier), and 939.63(1)(b) (dangerous weapon enhancer), the no-merit report asserts that “[t]he court’s description of the maximum penalties was correct.” Here, the parties clearly explained how they arrived at the ten-year maximum, which was by adding the five-year penalty enhancer to the fifteen-year completed offense, and then halving that number due to the attempt modifier. It appears that one could also apply the statute to arrive at a maximum of twelve and one-half years, namely, by halving the fifteen-year penalty for the completed offense and then adding five years to the initial confinement portion based on the penalty enhancer.

However, we conclude that no issue of arguable merit arises from this apparent ambiguity. The parties and the circuit court affirmatively agreed to use the ten-year maximum and their method was not clearly wrong. The ten-year maximum was stated in both the court’s plea-taking colloquy and the signed plea questionnaire filed with the court. Additionally, the sentence actually imposed is well within the maximum no matter which method is used. Indeed, under either method, the five-year penalty enhancer was never invoked. Finally, the use of the ten-year maximum could not have affected Shaske’s no-contest plea, given that it is less than twelve and one-half years and that ten counts were dismissed as part of the plea agreement.

IT IS FURTHER ORDERED that Attorney Thomas Brady Aquino⁴ is relieved from further representing Justin M. Shaske 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

⁴ Attorney Elizabeth Nash was originally appointed to represent Shaske, and filed the no-merit report. Thereafter, Attorney Aquino was appointed as successor counsel.