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DISTRICT III

March 15, 2022

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

2019AP2227-CRNM State of Wisconsin v. Calan W. Edwards (L. C. No. 2017CF61)

Before Stark, P.J., Hruz and Gill, 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).

The appointed appellate attorneys for Calan Edwards have filed a no-merit report concluding that no grounds exist to challenge Edwards' convictions for obstructing an officer and felony bail jumping, both counts as a repeater.[1] Edwards was informed of his right to file a response to the no-merit report, and he has filed multiple responses. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude

[1] Attorneys Elizabeth Nash and Susan Alesia filed the no-merit report; however, Attorney Megan Sanders-Drazen was later substituted as appellate counsel in this matter.

there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21 (2019-20).[2]

A criminal complaint charged Edwards with six counts, each as a repeater: misdemeanor battery (domestic abuse); disorderly conduct; obstructing an officer; and three counts of felony bail jumping. The complaint alleged that on August 5, 2017, Edwards called dispatch to report that his father had taken the keys to Edwards' truck and was refusing to return them. An officer then called Edwards' father, who reported that Edwards was attacking him and requested that the police respond. When officers arrived at the scene, they saw Edwards walking out the front door of a house. Edwards then fled into the woods. An officer pursued Edwards on foot, identifying himself as a law enforcement officer and yelling for Edwards to stop. Edwards did not comply with the officer's commands and proceeded into a thickly wooded area, where the officer lost track of him.

The complaint alleged that Edwards' father sustained several injuries as a result of Edwards' attack. The complaint also alleged that Edwards' brother was punched twice in the head during the altercation. The complaint further alleged that on the date in question, Edwards was subject to two deferred entry of judgment agreements in Bayfield County case Nos. 2013CF58 and 2013CF79. Pursuant to the deferred entry of judgment agreements, Edwards had agreed to "remain on bond" in those cases, and his bond conditions required him "to not commit any crimes." The complaint also alleged that Edwards had been convicted of a

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

felony in case No. 2013CF58 and that his conviction in that case "remain[ed] of record and unreversed."

Edwards ultimately entered into a plea agreement with the State in the instant case, under which he agreed to plead guilty or no contest to Counts 3 and 4—obstructing an officer and felony bail jumping, both counts as a repeater. The agreement provided that the remaining counts would be dismissed and read in. The State also agreed to withdraw its motion to enter judgment in case No. 2013CF58 and to allow the deferred entry of judgment agreement in that case to expire as previously scheduled. The parties further agreed to extend the deferred entry of judgment agreement in case No. 2013CF79 for one year. Finally, the parties agreed to jointly recommend that the circuit court withhold sentence in the instant case and impose eighteen months' probation on Count 4 and one year of probation on Count 3.

Following a plea colloquy, the circuit court accepted Edwards' no-contest pleas to Counts 3 and 4. The court concluded that Edwards' pleas were knowingly and voluntarily entered. The court further determined, based on Edwards' stipulation, that the facts set forth in the criminal complaint provided an adequate factual basis for Edwards' pleas. The court then proceeded directly to sentencing. Following the parties' arguments, the court adopted the joint sentence recommendation, withholding sentence and imposing eighteen months' probation on Count 4 and a concurrent one-year term of probation on Count 3.[3]

[3] Edwards filed a postconviction motion asking the circuit court to amend his judgment of conviction to reflect that he would be entitled to 213 days of sentence credit if his probation were revoked. The court ultimately entered an amended judgment stating that Edwards "may be entitled" to 214 days of sentence credit in the event of a revocation of his probation.

The no-merit report addresses: (1) whether Edwards knowingly, intelligently, and voluntarily entered his no-contest pleas; (2) whether there was an adequate factual basis for Edwards' pleas; and (3) whether there would be any merit to challenging the circuit court's decision to withhold sentence and impose concurrent terms of probation. We agree with the description, analysis, and conclusion set forth in the no-merit report that any challenge to Edwards' judgment of conviction on these grounds would lack arguable merit.

Edwards has filed numerous responses to the no-merit report, raising a variety of issues.[4] First, Edwards appears to contend that his pleas were not knowing, intelligent, and voluntary because Attorney Ryan Reid allegedly told him: (1) "I will have you out at sentencing, man. I promise you time served"; (2) "I will have you out of jail on 1.28.2020"; (3) "Just hang in there a little longer, I will have you out"; and (4) "I assure you that you have sat in jail plenty." Edwards asserts that his appellate attorneys told him Reid's comments were "unlawful," but they refused to file a plea withdrawal motion on these grounds because they, like Reid, are employed by the Office of the State Public Defender.

Any claim for plea withdrawal based on Reid's alleged comments would lack arguable merit. The record shows that Reid did not represent Edwards in the underlying circuit court proceedings either during the plea and sentencing hearing or at any point before Edwards entered his pleas. Based on the record, it appears that after Edwards' probation in this case was revoked in December 2019, Reid may have represented Edwards during the sentencing-after-revocation

[4] It is somewhat difficult to discern each of the claims that Edwards intends to raise in his numerous responses to the no-merit report. We have done our best to identify and address Edwards' arguments. To the extent we do not specifically address any argument that Edwards intended to raise, we conclude that argument is insufficiently developed to warrant individual attention.

proceedings. However, the sentencing-after-revocation proceedings are the subject of a separate no-merit appeal and are not at issue in this appeal. There would be no arguable merit to a claim that any representations Reid may have made to Edwards after his probation was revoked in December 2019 would provide a basis for Edwards to withdraw his no-contest pleas at issue here, which were entered in September 2018.[5]

Edwards next suggests that he should be permitted to withdraw his pleas because the prosecutor threatened to revoke the deferred entry of judgment agreements in case Nos. 2013CF58 and 2013CF79 if Edwards did not accept the State's plea offer in this case. Edwards cites no legal authority, however, in support of his claim that any threat to revoke the deferred entry of judgment agreements was improper. Addressing a related issue, our supreme court has stated that a prosecutor may not "bring charges on counts of doubtful merit" to coerce a defendant to enter a guilty plea to a less serious offense. ***State v. Hooper***, 101 Wis. 2d 517, 538, 305 N.W.2d 110 (1981) (citation omitted). Here, any threat to revoke the deferred entry of judgment agreements was not based upon charges of "doubtful merit." The agreements provided that Edwards would remain on bond in case Nos. 2013CF58 and 2013CF79, and his bond conditions in those cases required him not to commit any new crimes. As such, Edwards' convictions for the offenses in this case would have provided a valid basis for the State to seek revocation of the deferred entry of judgment agreements. Under the plea agreement, the State

[5] Edwards also asserts that he has asked Reid to provide a copy of his file, but Reid has failed to do so. Again, this claim provides no basis to challenge Edwards' no-contest pleas or the terms of probation imposed in September 2018 because the record shows that Reid did not represent Edwards during the underlying circuit court proceedings at any time before or during the September 2018 plea and sentencing hearing. Although the contents of Reid's file may be relevant to the sentencing-after-revocation proceedings, there would be no arguable merit to a claim that Reid's file is relevant to the issues presented in this no-merit appeal.

agreed to withdraw its motion to revoke the deferred entry of judgment agreement in case No. 2013CF58 and to extend the deferred entry of judgment agreement in case No. 2013CF79 for one year. Those concessions provided a substantial benefit to Edwards. Under these circumstances, any claim that the prosecutor acted improperly by threatening to revoke the deferred entry of judgment agreements, thus coercing Edwards to enter his pleas, would lack arguable merit.[6]

Edwards also contends that he should be permitted to withdraw his pleas because the first attorney who was appointed to represent him in this case, Attorney Joseph Hoffmann, threatened to withdraw from representing Edwards if he did not accept the State's plea offer. The record shows, however, that Edwards did not decide to accept the State's plea offer while represented by Hoffmann. Instead, Hoffmann was permitted to withdraw from representing Edwards on March 28, 2018, and Attorney Martin Lipske was appointed to represent Edwards on July 18, 2018. Edwards subsequently entered his no-contest pleas on September 24, 2018. During the plea and sentencing hearing on that date, Edwards confirmed that no one had made any threats to induce him to enter his pleas. On this record, there would be no arguable merit to a claim that Edwards' decision to plead no contest was motivated by Hoffmann's alleged threat to withdraw from representing him.

[6] Edwards may also intend to argue that certain comments the prosecutor allegedly made to Attorney Reid during the sentencing-after-revocation proceedings show prosecutorial vindictiveness. However, Edwards does not explain why those comments would entitle him to relief with respect to his no-contest pleas or the terms of probation imposed by the circuit court in September 2018. Again, the sentences imposed after the revocation of Edwards' probation are not at issue in this appeal and are the subject of a separate no-merit appeal.

Edwards also asserts that he should be permitted to withdraw his pleas because his attorney—presumably Lipske—never explained what a withheld sentence was. Edwards contends he did not know that if sentence was withheld, he would be returned to court for sentencing in the event his probation was revoked. Ineffective assistance by Edwards' trial attorney could constitute a manifest injustice entitling Edwards to withdraw his pleas. *See* ***State v. Bentley***, 201 Wis. 2d 303, 311, 548 N.W.2d 50 (1996). However, on the record before us, we cannot conclude there would be arguable merit to a claim that Lipske was constitutionally ineffective by failing to explain the concept of a withheld sentence to Edwards.

To prove ineffective assistance, Edwards must show both that Lipske performed deficiently and that Lipske's alleged errors prejudiced the defense. *See* ***id.*** at 311-12. To establish prejudice in the plea-withdrawal context, a defendant must demonstrate a reasonable probability that, absent counsel's alleged errors, the defendant would not have entered his or her pleas and would have insisted on going to trial. ***Id.*** at 312. Edwards has not alleged, in any of his responses to the no-merit report, that he would not have entered his no-contest pleas and would have insisted on going to trial if Lipske had explained the concept of a withheld sentence to him. Moreover, the record shows that Edwards obtained significant benefits from accepting the State's plea offer: four of the charges against him in this case were dismissed; the State agreed not to seek revocation of one deferred entry of judgment agreement and to extend the other agreement for one year; and the parties jointly recommended that the circuit court impose probation. Under these circumstances, there would be no arguable merit to a claim that Edwards was prejudiced by Lipske's alleged failure to explain the concept of a withheld sentence.

Edwards also repeatedly emphasizes that, in proceedings to revoke his probation and extended supervision in two other cases, an administrative law judge (ALJ) concluded that

Edwards had acted in self-defense during the altercation with his father and brother that formed the basis for the misdemeanor battery and disorderly conduct charges in this case. The ALJ also concluded that although Edwards ran from the police following the altercation, "it was not legally required for him to turn himself [in to] the police officers." Edwards appears to argue that the ALJ's decision shows he did not commit the crimes charged and therefore provides a basis for him to withdraw his pleas.

Any claim for plea withdrawal on these grounds would lack arguable merit. Newly discovered evidence may be sufficient to establish that a manifest injustice has occurred, thereby entitling a defendant to withdraw his or her plea after sentencing. ***State v. McCallum***, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997). However, to withdraw a plea based on newly discovered evidence after sentencing, a defendant must prove four factors by clear and convincing evidence. ***Id.*** One of those factors is that the evidence was discovered after the defendant's conviction. ***Id.*** The ALJ's decision in the revocation proceedings was issued on March 5, 2018—more than six months before Edwards entered his pleas in this case. Although Edwards may not have been provided with a copy of the ALJ's decision before he entered his pleas, he does not assert that he was unaware of the substance of the ALJ's decision at that time. In spite of the ALJ's decision, Edwards chose to enter no-contest pleas to Counts 3 and 4 in this case, and he stipulated that the criminal complaint provided an adequate factual basis for his pleas. On these facts, there would be no arguable merit to a claim that the ALJ's decision constitutes newly discovered evidence entitling Edwards to plea withdrawal.

Edwards also contends that he is entitled to relief because: (1) he did not validly waive his preliminary hearing; (2) he was not represented by counsel for over 300 days during the circuit court proceedings; and (3) his right to a speedy trial was violated. These arguments fail

because we have already determined that there would be no arguable merit to a claim that Edwards' no-contest pleas were not knowing, intelligent, and voluntary. "A valid guilty or no contest plea waives all nonjurisdictional defenses to a conviction, including constitutional violations." ***State v. Milanes***, 2006 WI App 259, ¶13, 297 Wis. 2d 684, 727 N.W.2d 94.

Edwards further argues that he is entitled to relief because in June 2018, the Wisconsin Department of Corrections (DOC) imposed a rule of supervision that prevented him from having contact with the Office of the State Public Defender. Edwards asserts that this rule violated his right to due process and his right to an attorney. Edwards concedes, however, that the no-contact rule is no longer in place. Moreover, although the rule prevented Edwards from having contact with "the State Public Defender[']s Office in Ashland, Wisconsin," it allowed him to have contact with his "court appointed representation," which belies Edwards' claim that the rule violated his right to an attorney. More importantly, we are aware of no legal authority in support of the proposition that the illegality of a supervision rule imposed by the DOC would provide a basis to reverse Edwards' convictions in the instant case. Any claim premised on the no-contact order would therefore lack arguable merit.

Finally, Edwards argues that the ALJ's decision in the revocation proceedings discussed above shows that he was sentenced based on inaccurate information. *See* ***State v. Tiepelman***, 2006 WI 66, ¶26, 291 Wis. 2d 179, 717 N.W.2d 1. This claim lacks arguable merit because the ALJ's decision does not show that any of the information the circuit court relied upon when sentencing Edwards was inaccurate. Again, Edwards stipulated that the facts set forth in the criminal complaint provided a sufficient factual basis for his no-contest pleas. Although the ALJ determined in the revocation proceedings that Edwards acted in self-defense during the altercation with his father and brother and had no legal obligation to turn himself in to the police,

a different fact finder could conclude, based on the facts set forth in the criminal complaint, that Edwards committed the crimes charged. The mere fact that the evidence could support contrary inferences as to Edwards' guilt does not show that the facts the court relied upon at sentencing were "so extensively and materially false" as to deprive Edwards of due process. *See* ***State v. Travis***, 2013 WI 38, ¶18, 347 Wis. 2d 142, 832 N.W.2d 491.

Our independent review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Megan Sanders-Drazen is relieved of further representing Calan Edwards in this matter. *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