



OFFICE OF THE CLERK
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

March 29, 2022

To:

Hon. David L. Borowski
Circuit Court Judge
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Winn S. Collins
Electronic Notice

John D. Flynn
Electronic Notice

Annice Kelly
Electronic Notice

Charles A. Young
3630 N. 81st. St.
Milwaukee, WI 53222

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

2020AP991-CRNM State of Wisconsin v. Charles A. Young (L.C. # 2018CF4545)

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).

Charles A. Young appeals from a judgment convicting him of aggravated battery. His appellate counsel, Annice Kelly, 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 Young received a copy of the report, was advised of his right to file a response, and has elected not to do so. Following an initial review, this court ordered appellate counsel to address the sufficiency of the guilty plea colloquy.

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

Upon consideration of the no-merit report, counsel's supplemental filing, and an independent review of the record as mandated by *Anders*, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

As detailed in the criminal complaint, while "hanging out" at an apartment, Young struck the victim in the face several times with a closed fist. The victim did not fight back or attempt to block Young's strikes. Young then proceeded to kick the victim in the head three times. The victim asked Young why he had punched him, at which point Young pushed the victim, causing him to fall into a nearby table before then falling and hitting his head on the floor.

The victim suffered a brain bleed and other neurological damage. In a statement to police, which was referenced in the complaint, Young told an investigating detective that he was "triggered" when the victim would not stop talking. Young said that he punched the victim in the head "a lot" as the victim laid on a mattress before then kicking the victim in the head twice.

Young pled guilty to the crime as charged. Pursuant to the plea agreement, the State agreed to dismiss and read in charges that were pending against Young in a separate case. The State recommended that the circuit court award the full amount of restitution requested and that the circuit court order Young to spend time in prison, but did not otherwise make a recommendation as to the duration of the sentence.

The circuit court accepted Young's plea and ordered him to serve the maximum available sentence of three years of initial confinement and three years of extended supervision. The circuit court additionally imposed a \$2,000 fine, noting that it could not "over emphasize how

shocking the behavior in this case was” and reiterating that the behavior was “vicious, violent, [and] sadistic[.]” Young stipulated to the requested restitution.

The no-merit report addresses the potential issues of whether Young’s plea was valid and whether the circuit court properly exercised its discretion during sentencing. The plea colloquy, when augmented by the plea questionnaire and waiver of rights form and the addendum, along with counsel’s supplemental no-merit filing, demonstrates Young’s understanding of the information he was entitled to and that his plea was knowingly, voluntarily, and intelligently entered. See *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); see also *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

In this case, Young pled guilty to aggravated battery. However, the simple battery jury instruction, initialed by Young, was attached to the plea questionnaire and waiver of rights form and addendum. See WIS JI—CRIMINAL 1220; see also WIS. STAT. § 940.19(1). The applicable instruction for the specific crime to which Young pled—i.e., aggravated battery with substantial risk of great bodily harm—is WIS JI—CRIMINAL 1226. See § 940.19(6).

A defendant may move to withdraw a guilty plea based on a deficient colloquy by making a two-prong showing. The defendant must demonstrate that: (1) the colloquy did not conform with WIS. STAT. § 971.08 or other duties mandated during a plea hearing; and (2) the defendant did not know or understand the information that should have been provided at the hearing. *State v. Brown*, 2006 WI 100, ¶2, 293 Wis. 2d 594, 716 N.W.2d 906. In her supplemental filing, counsel advises that she and Young discussed his understanding of the elements and he confirmed that despite the fact that he initialed the simple battery instruction, he

understood that he was pleading guilty to the crime of aggravated battery and he understood the elements. Consequently, there would be no arguable merit to a challenge on this basis.

We additionally note that during the plea colloquy, the circuit court failed to advise Young of potential deportation consequences as required under WIS. STAT. § 971.08(1)(c). The no-merit report does not address this shortcoming. However, to be entitled to plea withdrawal on this basis, Young would have to show “that the plea is likely to result in [his] deportation, exclusion from admission to this country or denial of naturalization[.]” *See* § 971.08(2). There is no indication in the record that Young can make such a showing.

As to sentencing, the record reveals that the circuit court considered and applied the relevant factors. Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Young further in this appeal.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Annice Kelly is relieved of further representation of Young 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