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DISTRICT III

May 24, 2022

To:

Hon. David G. Miron
Circuit Court Judge
Electronic Notice

Danielle M. Gorsuch
Electronic Notice

Sheila Dudka
Clerk of Circuit Court
Marinette County Courthouse
Electronic Notice

DeShea D. Morrow
Electronic Notice

Christian A. Muchka
W7404 Barlow Lake Road
Pembine, WI 54156

Winn S. Collins
Electronic Notice

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

2021AP359-CRNM State of Wisconsin v. Christian A. Muchka (L. C. No. 2019CM65)

Before Gill, J.¹

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).

Counsel for Christian Muchka has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding that no grounds exist to challenge Muchka's convictions for criminal trespass and criminal damage to property, both counts as a party to the crime. Muchka was informed of his right to file a response to the no-merit report, and he has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967),

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

we conclude that 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.

According to the criminal complaint, Muchka and several juveniles broke into a Marinette County home during July 2019. Muchka and his co-defendants caused significant damage to the property, including kicking in a door, breaking windows, breaking tiles, breaking shelving, damaging a hot tub, and starting a fire in the home's yard. Based on these events, the State charged Muchka with one count of criminal trespass and one count of criminal damage to property, both counts as a party to the crime.

Muchka entered no-contest pleas to both of the charges against him, pursuant to a plea agreement. In exchange for Muchka's pleas, the State agreed to recommend that the circuit court impose and stay consecutive sentences of six months in jail on each count and place Muchka on probation for a period of two years. The State further agreed to recommend that the court impose thirty days in jail as a condition of probation on the criminal damage to property count, without good time but with Huber privileges. In addition, the plea agreement required Muchka to stipulate to the amount of restitution claimed by the victim, which was \$26,019.51.² The parties further agreed that Muchka's liability for that amount would be joint and several with his co-defendants.

Following a plea colloquy, supplemented by a plea questionnaire and waiver of rights form that Muchka had signed, the circuit court accepted Muchka's no-contest pleas, concluding

² A restitution summary showing the amount of restitution claimed by the victim and the basis for that amount was filed with the circuit court on October 25, 2019, over eight months before Muchka entered his no-contest pleas.

that they were freely, voluntarily, and intelligently made. The court further found that the criminal complaint set forth an adequate factual basis for Muchka's pleas.

The circuit court then proceeded immediately to sentencing. The court imposed and stayed consecutive sentences of nine months in jail on both counts and placed Muchka on probation for two years. As a condition of Muchka's probation on the criminal damage to property charge, the court ordered him to serve thirty days in jail, without good time but with Huber privileges. The court also ordered Muchka to pay the full amount of restitution claimed by the victim, jointly and severally with his co-defendants. Finally, the court denied Muchka's request for the expungement of his convictions in the event that he successfully completed his probation.

The no-merit report addresses: whether Muchka's no-contest pleas were knowing, intelligent, and voluntary; and whether the circuit court erroneously exercised its sentencing discretion. We agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further.

The no-merit report notes that Muchka has raised a concern regarding the circuit court's "aggressiveness ... during the sentencing [hearing] and it possibly rising to the level of bias." Counsel asserts, however, that she has investigated this issue and "no basis was found to appeal." Having independently reviewed the transcript of the sentencing hearing, we agree with counsel that the court's comments during that hearing do not give rise to an arguably meritorious claim of judicial bias.

The no-merit report does not address whether there would be arguable merit to a claim that the circuit court erred by denying Muchka's request for expungement. Upon our

independent review of the record, however, we conclude that any such claim would lack arguable merit.

WISCONSIN STAT. § 973.015(1m)(a)1. authorizes a circuit court to expunge certain criminal convictions if “the court determines the [offender] will benefit and society will not be harmed by this disposition.” The determination of whether to expunge a conviction is discretionary and will not be reversed on appeal unless the circuit court erroneously exercised its discretion. *State v. Helmbrecht*, 2017 WI App 5, ¶8, 373 Wis. 2d 203, 891 N.W.2d 412 (2016). Here, the circuit court reasoned that expungement would be inappropriate because Muchka had already received a substantial “break” when he was charged with misdemeanors, rather than felonies. The court further reasoned that society would be “harmed by not being aware” of Muchka’s convictions in this case. Although the court’s explanation was not extensive, the court considered the relevant statutory criteria and provided a rational basis for its decision to deny Muchka’s request for expungement. As such, there would be no arguable merit to a claim that the court erroneously exercised its discretion. *See id.* (stating a circuit court properly exercises its discretion if it relies on relevant facts in the record and applies a proper legal standard to reach a reasonable decision).

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 Danielle Gorsuch is relieved of further representing Christian Muchka 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