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DISTRICT III

June 1, 2022

To:

Hon. Gary L. Carlson
Reserve Judge

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

2021AP400-CRNM	State of Wisconsin v. Andrew R. Zaleski
2021AP401-CRNM	(L. C. Nos. 2018CF4, 2018CF40, 2019CF4, 2019CF5)
2021AP402-CRNM	
2021AP403-CRNM	

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).

In these consolidated appeals, counsel for Andrew Zaleski has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),¹ concluding that no grounds exist to challenge Zaleski's convictions for false imprisonment (domestic abuse), felony bail jumping, disorderly conduct, and stalking (domestic abuse). Zaleski was informed of his right to file a response to

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

the no-merit report, and he has not responded. Upon our independent review of the records as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21.

In Iron County case No. 2018CF4, the State charged Zaleski with false imprisonment, stalking, and violating a foreign protection order, each count as an act of domestic abuse. The complaint alleged that in January 2018, Zaleski tricked his former girlfriend, Claire,² into going to a hotel room by leading her to believe that she would be meeting another person there. The complaint further alleged that after Claire entered the hotel room, Zaleski revealed his presence and then prevented her from leaving the room for approximately twenty minutes. The complaint also alleged that at the time these events occurred, Claire had an active Michigan personal protection order against Zaleski.

In Iron County case No. 2018CF40, Zaleski was charged with a single count of felony bail jumping. The complaint alleged that Zaleski had been released on bond in case No. 2018CF4, and one of his bond conditions required that he have no contact with Claire. The complaint alleged that Zaleski violated that condition on September 16, 2018, by driving a vehicle through a parking lot at a park where Claire was attending a family reunion and later pulling a pontoon boat up to a beach a short distance away from the reunion.

² Pursuant to the policy underlying WIS. STAT. RULE 809.86, we refer to the victim using a pseudonym.

In Iron County case No. 2019CF4, Zaleski was charged with one count of physical abuse of a child (intentionally causing bodily harm) and one count of felony bail jumping. Those charges were based on allegations that Zaleski repeatedly struck a nine-year-old child with a wooden spoon on January 7, 2019. The complaint further alleged that at the time of that conduct, Zaleski was released on bond in four different Iron County cases.

Finally, in Iron County case No. 2019CF5, the State charged Zaleski with one count of stalking, as an act of domestic abuse; fourteen counts of felony bail jumping; and fourteen counts of violating a foreign protection order, as an act of domestic abuse. The complaint alleged that Zaleski had been using an application on his smart phone to send Claire texts from a different phone number, using a fictitious name. In the texts, Zaleski sent Claire unsolicited pictures, repeatedly asked Claire for pictures of herself, and made sexually suggestive comments. The complaint alleged that Zaleski sent these texts on at least fourteen different dates between December 23, 2018, and January 7, 2019. The complaint further alleged that at the time this conduct occurred, Zaleski was subject to bond conditions in four separate cases that prohibited him from having any contact with Claire. In addition, the complaint alleged that a Michigan personal protection order prohibited Zaleski from communicating with Claire.

Zaleski and the State ultimately entered into a global plea agreement that resolved the four cases discussed above.³ The agreement provided that Zaleski would plead no contest to the false imprisonment charge, as an act of domestic abuse, in case No. 2018CF4, and the two

³ The plea agreement also provided that the charges in Iron County case Nos. 2018CF35 and 2018CF42 would be dismissed outright, with prejudice.

remaining counts in that case would be dismissed outright, with prejudice. In case No. 2018CF40, Zaleski would plead no contest to the felony bail jumping charge. In case No. 2019CF4, Zaleski would plead no contest to one count of disorderly conduct (amended from physical abuse of a child), and the felony bail jumping charge would be dismissed outright, with prejudice. In case No. 2019CF5, Zaleski would plead no contest to the stalking charge, as an act of domestic abuse, and the remaining twenty-eight counts would be dismissed outright, without prejudice. The agreement further provided that the State would cap its sentencing recommendation at the recommendation contained in the Department of Corrections' presentence investigation report (PSI).

The circuit court conducted a plea colloquy, which was supplemented by plea questionnaire and waiver of rights forms that Zaleski had signed regarding each case. Following the colloquy, the court accepted Zaleski's no-contest pleas, finding that they were freely, voluntarily, and intelligently made. The court further found that the allegations in the criminal complaints provided an adequate factual basis for Zaleski's pleas.

The circuit court ordered a PSI, which recommended that the court impose the following consecutive sentences: three years' initial confinement and two years' extended supervision on the false imprisonment charge; three years' initial confinement and two years' extended supervision on the felony bail jumping charge; ninety days in jail on the disorderly conduct charge; and eighteen months' initial confinement and two years' extended supervision on the stalking charge. At sentencing, Zaleski asserted that the PSI author had improperly considered the facts underlying the charges that had been dismissed outright. Zaleski therefore argued that a new PSI was required. During a recess, the parties contacted the PSI author, who stated that her

consideration of the facts pertaining to the dismissed charges did not affect her ultimate sentencing recommendation. The court subsequently concluded that the PSI, as a whole, was accurate. The court further stated that it would not consider any of the charges that had been dismissed outright when sentencing Zaleski. The court ultimately imposed concurrent and consecutive sentences totaling three years and six months' initial confinement followed by four years' extended supervision.

The no-merit report addresses whether there would be any arguable merit to a claim for a plea withdrawal or to a claim that 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.

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

Therefore,

IT IS ORDERED that the judgments are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Thomas Aquino is relieved of further representing Andrew Zaleski in these matters. *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