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DISTRICT I

June 14, 2022

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Donald A. Kernan
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You are hereby notified that the Court has entered the following opinion and order:

2020AP1104-CRNM	State of Wisconsin v. Donald A. Kernan (L.C. # 2015CF4026)
2020AP1105-CRNM	State of Wisconsin v. Donald A. Kernan (L.C. # 2016CF3630)
2020AP1106-CRNM	State of Wisconsin v. Donald A. Kernan (L.C. # 2016CF4906)

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).

In these consolidated matters, Donald A. Kernan appeals from judgments convicting him of six felonies. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20) and *Anders v. California*, 386 U.S. 738 (1967).¹ Kernan received a

¹ The no-merit report was filed by Attorney Jorge R. Fragoso. On April 27, 2021, Attorney Jay Pucek was substituted as counsel for Kernan and now represents Kernan in this appeal.

(continued)

copy of the report, was advised of his right to file a response, and did not do so. We have independently reviewed the record and the no-merit report as mandated by *Anders*. We conclude that there is no issue of arguable merit that could be pursued on appeal. We, therefore, summarily affirm.

Milwaukee County Case No. 2015CF4026

In this case, the complaint alleged that Kernan deposited \$40,000 worth of useless checks into a bank account he held, which he then used to pass other worthless checks. The amended information listed sixteen charges against Kernan. Kernan ultimately entered no-contest pleas to two counts of theft by fraud (value exceeding \$10,000).

Milwaukee County Case No. 2016CF3630

According to this complaint, Kernan “stole \$3,914.79 from the mayoral election campaign account of Alderman Joe Davis.” As a result, the State charged him with one count of theft by fraud and one count of fraud against a financial institution as a party to the crimes. Kernan entered a no-contest plea to the theft-by-fraud charge (value exceeding \$2,500, but less than \$5,000).

Milwaukee County Case No. 2016CF4906

In this case, the State charged Kernan with twelve counts of theft (embezzlement) and fourteen counts of making misleading statements or omissions in connection with securities

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

trading. The forty-five page complaint detailed a number of investment schemes undertaken by Kernan between 2011 and 2013 when he was between the ages of twenty and twenty-two. The common theme for all of the charges was that Kernan misled his investors regarding their investments, and misappropriated/misused the money they gave him to invest. According to the complaint, Kernan defrauded the investors of more than \$700,000. Kernan pled no-contest to three counts of making misleading statements or omissions in connection with securities trading.

At a combined sentencing hearing on all three cases, the circuit court sentenced Kernan to a global bifurcated sentence of four years of initial confinement and five years of extended supervision. Following a hearing, the circuit court ordered Kernan to pay more than \$360,000 in restitution to the numerous victims in the three cases.

The no-merit report addresses the potential issues of whether Kernan's pleas were valid and whether the circuit court properly exercised its discretion during sentencing and in ordering Kernan to pay restitution. The plea colloquy, when augmented by the plea questionnaire and waiver of rights form, the addendum, and the applicable jury instructions, demonstrate Kernan's understanding of the information he was entitled to and that his plea was knowingly, voluntarily, and intelligently entered.² 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). Additionally, the record reveals that the circuit court considered and applied the relevant

² At the initial appearance, the circuit court slightly misstated the charges against Kernan in Case No. 2016CF4906 as including eight counts of felony theft from a business setting and one count of felony theft, embezzlement, as party to a crime. The charges against Kernan, actually included nine counts of felony theft from a business setting and one count of felony theft, embezzlement, as party to a crime. Any alleged defect in the initial appearance is forfeited by Kernan's no-contest pleas. See *State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886.

sentencing factors. This court is satisfied that the no-merit report properly concludes the issues it raises are without merit. We will briefly elaborate only on the issue of restitution.

Restitution is governed by WIS. STAT. § 973.20. “A request for restitution, including the calculation as to the appropriate amount of restitution, is addressed to the circuit court’s discretion[.]” *State v. Gibson*, 2012 WI App 103, ¶8, 344 Wis. 2d 220, 822 N.W.2d 500. Our standard of review is highly deferential. See *State v. Fernandez*, 2009 WI 29, ¶8, 316 Wis. 2d 598, 764 N.W.2d 509.

Here, the record supports the circuit court’s exercise of discretion in ordering restitution. Kernan’s trial counsel challenged one victim’s request for attorney fees and additionally presented an inability-to-pay argument under WIS. STAT. § 973.20(13)(a). The circuit court listened to the testimony provided during the restitution hearing from an examiner with the State of Wisconsin Division of Securities and an investigator with the Milwaukee County District Attorney’s office. The circuit court additionally reviewed the supporting documentation before setting restitution. Ultimately, the circuit court ordered Kernan to pay only 70-80% of what the State proved was due in restitution and did not allow restitution for one victim’s request for attorney fees. There would be no arguable merit to challenge the circuit court’s discretion in awarding restitution.

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

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Jay Pucek is relieved of further representation of Donald A. Kernan 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