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DISTRICT III

June 14, 2022

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

2021AP894-CRNM	State of Wisconsin v. Logan L. Neu
2021AP895-CRNM	(L. C. Nos. 2019CF407, 2019CF914,
2021AP1039-CRNM	2019CF1338)

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 Logan Neu has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),¹ concluding that no grounds exist to challenge Neu's convictions for three counts of second-degree sexual assault of a child. Neu was informed of his right to file a response to the no-merit report, but he has not responded. Upon our independent

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

review of the records as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgments of conviction.² See WIS. STAT. RULE 809.21.

In Marathon County case No. 2019CF407, Neu was charged with repeated sexual assault of a child, as a persistent repeater; second-degree sexual assault of a child, as a persistent repeater; two counts of incest, as a persistent repeater; three counts of exposing genitals to a child; and one count of causing a child to expose her pubic area. These charges were premised on allegations that Neu had repeatedly sexually assaulted his female first cousin when she was between ten and fourteen years old.

Neu was subsequently charged in Marathon County case No. 2019CF914 with first-degree sexual assault of a child under the age of twelve, as a persistent repeater; child enticement, as a persistent repeater; incest, as a persistent repeater; and causing a child to expose her pubic area. The criminal complaint alleged that Neu had sexually assaulted his niece when she was nine years old.

Thereafter, Neu was charged in Marathon County case No. 2019CF1338 with first-degree sexual assault of a child under the age of sixteen by use or threat of force or violence, as a persistent repeater; repeated sexual assault of a child, as a persistent repeater; incest, as a persistent repeater; strangulation and suffocation; and felony intimidation of a victim. The

² In each case, the no-merit notice of appeal also purports to appeal from an April 23, 2021 order granting Neu's postconviction motion to correct the judgments of conviction. Neu was not aggrieved by that order, however, as the circuit court granted his requested relief. Because Neu was not aggrieved by the April 23, 2021 order, he has no right to appellate review of that order. See *State v. Perry*, 136 Wis. 2d 92, 95, 401 N.W.2d 748 (1987). As such, only the judgments of conviction are properly before us.

criminal complaint alleged that Neu had repeatedly sexually assaulted another female first cousin when she was between twelve and thirteen years old. The complaint further alleged that Neu threatened the victim that if she told anyone about the assaults, he would “get out of prison and kill her.”

The parties ultimately entered into a global plea agreement that resolved the three cases discussed above. In case No. 2019CF407, Neu pled no contest to one count of second-degree sexual assault of a child, without the persistent repeater enhancer. In case No. 2019CF914, Neu pled no contest to one count of second-degree sexual assault of a child (amended from first-degree sexual assault of a child under age twelve, as a persistent repeater). In case No. 2019CF1338, Neu pled no contest to one count of second-degree sexual assault of a child (amended from first-degree sexual assault of a child under age sixteen by use or threat of force or violence, as a persistent repeater). The remaining counts in all three cases were dismissed and read in. The plea agreement further provided that a presentence investigation report would be ordered and that both sides would be free to argue at sentencing.

Following a plea colloquy, supplemented by signed plea questionnaire and waiver of rights forms for each case, the circuit court accepted Neu’s no-contest pleas, finding that they were freely, voluntarily and intelligently made.³ The court subsequently imposed consecutive

³ As noted in the no-merit report, the circuit court did not make an express finding during the plea hearing that there was a factual basis for Neu’s no-contest pleas. We agree with the no-merit report’s analysis and conclusion, however, that this failure does not give rise to an arguably meritorious claim for plea withdrawal. In particular, we note that WIS. STAT. § 971.08(1)(b) requires a court to “[m]ake such inquiry as satisfies it that the defendant in fact committed the crime charged.” “The phrase, ‘such inquiry,’ indicates that a judge may establish the factual basis as he or she sees fit, as long as the judge guarantees that the defendant is aware of the elements of the crime, and the defendant’s conduct meets those elements.” *State v. Thomas*, 2000 WI 13, ¶22, 232 Wis. 2d 714, 605 N.W.2d 836.

(continued)

sentences of fifteen years' initial confinement followed by five years' extended supervision on each count, for a total of forty-five years' initial confinement followed by fifteen years' extended supervision. The court ordered that restitution would be held open in all three cases "for any future mental health treatment or related costs." In case No. 2019CF1338, the parties later stipulated that Neu owed restitution in the amount of \$9,603. The court therefore ordered Neu to pay restitution in that amount, and his judgment of conviction was amended accordingly.

Although Neu had not been placed on probation, the restitution order in case No. 2019CF1338 stated that Neu would make scheduled payments toward his restitution obligation "as a condition of probation." On April 22, 2021, the State sought to amend the restitution order to state that Neu's restitution obligation would be paid from his "prison funds/wages at a rate of at least 25% monthly" and that the remaining balance would be paid as a condition of his extended supervision. The court signed the State's proposed amended restitution order on April 23, 2021. On the same day, Neu objected to the court amending the restitution order, asserting that the court lacked the authority to do so. Neu also filed a motion asking the court to correct his judgments of conviction in all three cases so as to remove the language stating that restitution remained open.

Here, the record shows that Neu was aware of the elements of the crimes to which he pled, and the factual allegations in the criminal complaints establish that Neu's conduct satisfied those elements. Moreover, the circuit court asked the prosecutor during the plea hearing if the amended counts to which Neu was pleading were consistent with the evidence in the case and with "what [the State] feels it can properly prove," and the prosecutor responded in the affirmative. Later on during the plea hearing, Neu confirmed that he had reviewed the evidence with his attorneys and that they had explained "how that evidence support[ed] the charges against [him]." We agree with appellate counsel that, under these circumstances, there would be no arguable merit to a claim that Neu is entitled to plea withdrawal based on the court's failure to make an express finding that there was a factual basis for his pleas.

The circuit court granted Neu's motion to correct his judgments of conviction on April 23, 2021, and the judgments were subsequently amended to remove the language stating that restitution remained open. Neu later informed the court that he was withdrawing his objection to the amended restitution order in case No. 2019CF1338 permitting the Department of Corrections to collect restitution from his prison funds and wages.

The no-merit report addresses: whether Neu'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.

Our independent review of the record 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 Timothy O'Connell is relieved of further representing Logan Neu 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