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DISTRICT II

July 27, 2022

To:

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Circuit Court Judge
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Samuel A. Christensen
Clerk of Circuit Court
Racine County Courthouse
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Patricia J. Hanson
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Dustin C. Haskell
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Ronald E. Kaehne, #653742
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P.O. Box 19033
Green Bay, WI 54307-9033

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

2020AP1264-CRNM State of Wisconsin v. Ronald E. Kaehne (L.C. #2015CF78)

Before Neubauer, Grogan and Kornblum, 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).

Attorney Leon W. Todd, as appointed counsel for Ronald E. Kaehne, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Counsel provided Kaehne with a copy of the report, he responded to it, and counsel then filed a supplemental no-merit report. On February 23, 2022, we ordered counsel to further

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

address one issue, and replacement counsel Dustin C. Haskell filed a second supplemental no-merit report.

We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

Kaehne was convicted of one count of attempted first-degree intentional homicide and one count of armed burglary. He pled no contest at the guilt phase of the proceedings and, after a trial, the court found that he failed to prove his defense of not guilty by reason of mental disease or defect. The court imposed consecutive sentences totaling forty years of initial confinement and twenty-five years of extended supervision.

The no-merit report addresses whether the circuit court erred by denying Kaehne's motion to suppress statements he made. Counsel asserts that it would be frivolous to argue that the court erred by concluding that Kaehne's statements were made after a proper waiver of his right to remain silent. We agree. The circuit court's findings on this point were amply supported by the record.

As to voluntariness of the statements, the no-merit report also asserts that it would be frivolous to argue that the court erred by finding his statements to be voluntarily made. In our order of February 23, 2022, we directed counsel to review an issue regarding the voluntariness of Kaehne's statements to police during the first interview.

The issue relates to the denial of Kaehne's first two requests to use the bathroom. The record, in the form of the recording of the interview, shows that Kaehne was not permitted to use

the restroom for thirty-two minutes after his first request and not until after his third request. The recording further shows that it was in between Kaehne's second and third requests that his stance changed from denying involvement in the incident under investigation to making inculpatory statements admitting his involvement. The original no-merit report did not discuss this aspect of the interrogation.

Kaehne's attorney now concludes that this issue lacks arguable merit. Counsel asserts in part that the record does not support an argument that Kaehne was experiencing sufficient distress to make his statement involuntary due to lack of bathroom access. We agree, based on a moment after Kaehne made his second request to use the bathroom. The recording shows that when the interrogator responded to Kaehne's request by stating that he wanted to ask a "couple" more questions first, and then asking Kaehne if that was "ok," Kaehne responded "ok."

Even if Kaehne may have been feeling some sense of urgency at that point, this is not likely a response that a person would make if they were feeling an urgency and distress strong enough to make subsequent statements involuntary. And, Kaehne's response at that moment differs from his response later, after he made his third request, when the officer again asked to postpone it, and Kaehne stated that he did not agree, and wanted to use the bathroom.

Accordingly, we conclude that it would be frivolous to argue that the statement was involuntary on this basis. The record does not show any other basis to argue that Kaehne's statements were involuntary.

The no-merit report addresses whether Kaehne's pleas were entered knowingly, voluntarily, and intelligently. The report acknowledges that the plea colloquy failed to comply with certain requirements relating to the rights Kaehne was waiving and the possible

immigration consequences. However, the report further states that counsel is not able to make other factual allegations that would be necessary to support a postconviction motion based on those omissions. Kaehne's response did not dispute this point.

Other than these omissions, the plea colloquy sufficiently complied with the requirements of ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Kaehne was waiving, and other matters. The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report addresses whether the circuit court erred by finding that Kaehne did not meet his burden to prove that he was not guilty by reason of mental disease or defect. Without attempting to recite the evidence here, we are satisfied that there is no arguable merit to this issue. A finding against Kaehne on this issue was well supported by the opinion of the expert witness called by the State, and by other information in the record about Kaehne's behavior and thoughts at the time of the crimes.

In Kaehne's response to the no-merit report, he asserts that the State failed to provide his trial counsel with a copy of one of Kaehne's notebooks that his counsel asked the State to provide. In a supplemental no-merit report, counsel confirms that the State did not provide this item before trial, and that counsel has now obtained a copy of the notebook. Counsel addresses whether the State's failure to produce the notebook violated its obligation to provide the defense with exculpatory evidence. Counsel concludes that the content of the notebook arguably provides additional support for Kaehne's claim that he had a mental disease or defect.

However, counsel further concludes that the notebook would not be likely to lead to a different outcome because its content does not appear likely to undermine the circuit court's

reasons for finding that Kaehne was able to appreciate the wrongfulness of his conduct and conform his conduct to the requirements of law. We agree with this conclusion, again based on the opinions of the State's expert and the other evidence regarding Kaehne's state of mind.

The no-merit report addresses Kaehne's sentences. As explained in the no-merit report, the sentences are within the legal maximums. As to discretionary issues, the standards for the circuit court and this court are well established and need not be repeated here. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

In Kaehne's response to the no-merit report, he asserts that the lengthy sentence he received fails in various ways to serve the interest of rehabilitating him. Even if we assume that Kaehne is correct in that perception, rehabilitation is not the only purpose of sentencing. In this case, the sentencing court also properly relied on the severity of the crimes, the impact on the victims, and the risk Kaehne posed to the community. There is no basis for Kaehne to seek resentencing on this ground.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved of further representation of Ronald E. Kaehne 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