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DISTRICT IV

September 22, 2022

To:

Hon. Barbara W. McCrory
Circuit Court Judge
Electronic Notice

Jacki Gackstatter
Clerk of Circuit Court
Rock County Courthouse
Electronic Notice

Cary E. Bloodworth
Electronic Notice

Winn S. Collins
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Gerald A. Urbik
Electronic Notice

Nicholas Daniel Fritsch 657536
Wisconsin Resource Center
P.O. Box 220
Winnebago, WI 54985-0220

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

2021AP779-CRNM State of Wisconsin v. Nicholas Daniel Fritsch (L.C. # 2018CF1065)

Before Kloppenburg, Graham, and Nashold, 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 Cary Bloodworth, as appointed counsel for Nicholas Fritsch, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Fritsch filed a response to the 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.

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

In 2019, Fritsch pled guilty to one count of operating a motor vehicle without the owner's consent. The circuit court withheld sentence and placed Fritsch on probation. Fritsch's probation was revoked in 2020 and he was returned to the court for sentencing. The court imposed a sentence of one year of initial confinement and two years of extended supervision, consecutive to other sentences previously imposed.

The no-merit report addresses Fritsch's sentence. In Fritsch's response, he states that he believes he received a consecutive sentence because the sentencing hearing was conducted using a live audio-visual method, rather than in person. However, he does not explain why he thinks this method affected the sentence, and the record from the hearing does not appear to support that conclusion. In addition, at the hearing, Fritsch waived his right to be present in person at sentencing. For these reasons, we conclude that it would be frivolous to make an argument based on the use of an audio-visual method.

In Fritsch's response, he also describes progress he has made that he believes makes the consecutive year of initial confinement imposed in this case unnecessary. While we applaud any such progress, we are not able to consider it on appeal. On appeal, we review the sentence that was imposed by the circuit court, based on the information that was available to that court at the time. We affirm the circuit court unless it erroneously exercised its discretion, which we decide using a deferential standard that is explained in *State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197.

Here, as explained in the no-merit report, the sentence is within the maximum provided by law for a class H felony. As to discretionary issues, the circuit court considered appropriate

factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

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 Bloodworth is relieved of further representation of Fritsch 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