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DISTRICT IV

October 13, 2022

To:

Hon. Barbara W. McCrory
Circuit Court Judge
Electronic Notice

Jacki Gackstatter
Clerk of Circuit Court
Rock County Courthouse
Electronic Notice

Winn S. Collins
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Lucas Eugene Stuhr 541117
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You are hereby notified that the Court has entered the following opinion and order:

2021AP722-CRNM State of Wisconsin v. Lucas Eugene Stuhr (L.C. # 2019CF108)

Before Fitzpatrick, 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 Daniel Goggin, appointed counsel for Lucas Stuhr, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Stuhr was sent a copy of the report and has not filed a response. We conclude that this case is appropriate for summary disposition. See WIS. STAT.

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

RULE 809.21. Upon consideration of the report and an independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

Stuhr pled guilty to one count of second-degree intentional homicide. Pursuant to the plea deal, the parties agreed that a presentence investigation report (PSI) would be prepared and that the parties were free to argue as to their sentencing recommendations. The court ultimately imposed a sentence consisting of thirty years of initial confinement and fifteen years of extended supervision.

The no-merit report addresses whether there would be any arguable merit to challenging the circuit court's competency determination. "No person who lacks substantial mental capacity to understand the proceedings or assist in his or her defense may be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures." *State v. Byrge*, 2000 WI 101, ¶28, 237 Wis. 2d 197, 614 N.W.2d 477. To determine legal competency, the court considers a defendant's present mental capacity to understand and assist at the time of the proceedings. *Id.*, ¶31. A trial court's competency determination should be reversed only when clearly erroneous. *Id.*, ¶45.

In this case, the court ordered an examination of Stuhr to determine if he was competent to stand trial. Stuhr was evaluated by a psychiatrist and a report was filed with the court. The report indicated that Stuhr was not competent to proceed, but would likely regain competency were he to receive treatment and care. A review hearing was held, at which the parties stipulated to the findings in the examination report, pursuant to WIS. STAT. § 971.14(4)(b). The circuit court found that Stuhr was incompetent to proceed, but likely to become competent within twelve months. By a court order entered February 22, 2019, Stuhr was committed to the

Department of Health Services (DHS) for treatment. While under DHS commitment, Stuhr underwent an additional competency evaluation by a psychologist. On June 18, 2019, the circuit court held a competency hearing to review the psychologist's report. The report stated the examining psychologist's findings that Stuhr's competency had been restored and that Stuhr had substantial mental capacity to understand the proceedings and assist in his own defense. At the hearing, no party objected to the report's findings and no evidence was presented to undermine the psychologist's findings. The court resumed the criminal proceedings pursuant to § 971.14(4)(c). There is nothing in the no-merit report or the record that would support an arguably meritorious challenge to the circuit court's competency determination.

The no-merit report also discusses whether Stuhr's plea was entered knowingly, voluntarily, and intelligently. Our independent review of the record reveals that the plea colloquy sufficiently complied with the requirements of *State v. Bangert*, 131 Wis. 2d 246, 255-73, 389 N.W.2d 12 (1986), and WIS. STAT. § 971.08 relating to the nature of the charge, Stuhr's understanding of the proceedings and the voluntariness of the plea decision, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. The record also establishes that Stuhr stipulated that there was a factual basis for the plea. The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report also addresses whether the circuit court erroneously exercised its sentencing discretion. As explained in the no-merit report, the sentence imposed is within the legal maximum. The standards for the circuit court and this court on discretionary sentencing issues 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 including the information in the PSI, did not consider improper factors, and reached a

reasonable result. Any argument that the circuit court erroneously exercised its sentencing discretion is without arguable merit on appeal.

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 Daniel Goggin is relieved of any further representation of Lucas Stuhr 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