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DISTRICT III

November 1, 2022

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Marinette County Courthouse
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Troy Daniel Evert, Jr. 691029
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Waupun, WI 53963-0700

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

2020AP1123-CRNM State of Wisconsin v. Troy Daniel Evert, Jr.
(L. C. No. 2018CF78)

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).

Counsel for Troy Evert, Jr., has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),¹ concluding that no grounds exist to challenge Evert's conviction for conspiracy to commit first-degree intentional homicide. Evert was informed of his right to file a response to the no-merit report, but he has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no

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

arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The criminal complaint alleged that Evert had taken part in a conspiracy to kill the victim, Jonathan.² According to the complaint, Jonathan had previously dated Evert's girlfriend, Rachel Kirschner. After Jonathan and Kirschner broke up in July 2017, they remained in contact, but Kirschner began dating Evert. In October 2017, Kirschner admitted to Jonathan that she and Evert had burned down another ex-boyfriend's cabin. Jonathan then threatened to tell police about the arson unless Kirschner broke up with Evert.

The complaint alleged that because of Jonathan's threats, Evert began trying to make arrangements to have Jonathan killed. On December 17, 2017, Evert contacted Dylan Decesare, an acquaintance from Illinois, and offered him \$100 to kill Jonathan. Decesare told police that during a phone conversation with Evert on that date, Evert stated that "a guy threatened to go to the police about a fire that Evert and his fiancée were involved with, and he wanted the guy killed." According to Decesare, "Evert said that if [Decesare] would not help him, Evert would have Scott Reed kill the guy." Reed was a close friend of Kirschner who lived with Kirschner and Evert. Evert and Reed subsequently withdrew \$100 from an ATM, and Reed wired the money to Decesare. Decesare did not, however, travel to Wisconsin to kill Jonathan.

Instead, at about 9:20 p.m. on December 17, 2017, Reed arrived at Jonathan's residence and attacked him with a three-inch kitchen knife. Jonathan told police that Reed initially tried to

² Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use a pseudonym instead of the victim's name.

stab his “midsection, right below his ribs,” but Jonathan “used his right arm to defend himself as the knife was coming towards him.” As a result, the knife stabbed Jonathan’s right upper forearm, causing a deep laceration. Reed then pulled the knife out of Jonathan’s arm and attempted to stab him again, but Jonathan was able to resist until his grandfather came to his aid, at which point Reed ran away.

Based on these allegations, the State charged Evert with conspiracy to commit first-degree intentional homicide. Evert ultimately entered a no-contest plea to that charge, pursuant to a plea agreement. In exchange for Evert’s plea, the State agreed that a charge of felony intimidation of a witness, as a repeater, in a separate case would be dismissed and read in for purposes of sentencing. The parties jointly requested a presentence investigation report (PSI), and the State agreed to cap its sentence recommendation at fifteen years of initial confinement followed by ten years of extended supervision. The State also agreed to recommend certain conditions of extended supervision. The defense was free to argue at sentencing.

Following a plea colloquy, supplemented by a signed plea questionnaire and waiver of rights form, the circuit court accepted Evert’s no-contest plea, finding that it was freely, voluntarily, and intelligently made. Evert’s attorney agreed that the court could rely on the facts alleged in the criminal complaint as the factual basis for Evert’s plea, and the court found that the record contained an adequate factual basis for the plea.

A PSI was subsequently prepared, which recommended a sentence consisting of nine to thirteen years of initial confinement followed by five to six years of extended supervision. The defense submitted an alternative PSI, which recommended a sentence consisting of five years of

initial confinement followed by eight years of extended supervision. After considering the parties' sentencing arguments, and after Evert exercised his right of allocution, the circuit court sentenced Evert to twenty years of initial confinement followed by ten years of extended supervision, consecutive to any other sentence. The court later granted Evert's postconviction motion to modify his conditions of extended supervision to allow contact with Kirschner, whom Evert had married in 2018.

The no-merit report addresses whether there would be any arguable merit to a claim for plea withdrawal and whether there are any arguable grounds to challenge Evert's sentence. We agree with counsel's description, analysis, and conclusion that these potential issues lack arguable merit, and we therefore do not address them further.³ The entry of a valid no-contest plea waives all nonjurisdictional defects and defenses, including alleged constitutional violations that occurred before the plea was entered. See *State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

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

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

³ Although not addressed in the no-merit report, we note that the circuit court briefly mentioned the COMPAS risk assessment during its sentencing remarks. However, the court's comments clearly show that COMPAS was not "determinative" of the sentence imposed. See *State v. Loomis*, 2016 WI 68, ¶¶98-99, 371 Wis. 2d 235, 881 N.W.2d 749. Any challenge to Evert's sentence on this basis would therefore lack arguable merit.

IT IS FURTHER ORDERED that Attorney Erica L. Bauer is relieved of her obligation to further represent Troy Evert, Jr., 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