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DISTRICT III

November 22, 2022

To:

Hon. Gregory B. Huber
Circuit Court Judge
Electronic Notice

Kelly Schremp
Clerk of Circuit Court
Marathon County Courthouse
Electronic Notice

Frances Philomene Colbert
Electronic Notice

Anita Maureen Lawrence
Marathon County District Attorney's Office
500 Forest Street
Wausau, WI 54403

Raymond J. Filtz
2307 Cleveland Street
Eau Claire, WI 54703

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

2022AP957-CRNM State of Wisconsin v. Raymond J. Filtz (L. C. No. 2017CF804)

Before Gill, J.¹

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 Raymond Filtz has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding that no grounds exist to challenge an order denying Filtz's request for expungement and a subsequent order denying his postconviction motion for expungement. Filtz 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

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

(1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the circuit court's orders. *See* WIS. STAT. RULE 809.21.

In July 2017, Filtz was charged with second-degree sexual assault, sexual intercourse with a child age sixteen or older, and possession of child pornography. Pursuant to a plea agreement, the State later filed an amended Information charging Filtz with third-degree sexual assault, sexual intercourse with a child age sixteen or older, possession of child pornography, and two counts of disorderly conduct. Filtz pled no contest to the third-degree sexual assault charge, a Class G felony. He pled guilty to the charge of sexual intercourse with a child age sixteen or older and to the two disorderly conduct charges, all of which were misdemeanors. In exchange for Filtz's pleas, the possession of child pornography charge was dismissed without prejudice. The parties entered into a deferred entry of judgment agreement with respect to the third-degree sexual assault charge, which stated that charge would be dismissed if Filtz successfully completed two years of probation on the misdemeanor counts.

The circuit court accepted Filtz's pleas and the deferred entry of judgment agreement. On the three misdemeanor charges, the court withheld sentence and placed Filtz on probation for two years, with sixty days of conditional jail time. During the sentencing hearing, Filtz argued in favor of expungement, and the State asked the court to deny that request. The court decided to hold the issue of expungement open until a later date. A judgment of conviction was entered on the misdemeanor charges, and Filtz did not appeal his convictions on those counts.

After Filtz successfully completed his two-year term of probation on the misdemeanor charges, he returned to court for a review hearing. At that time, the circuit court dismissed the third-degree sexual assault charge, pursuant to the deferred entry of judgment agreement. Filtz

then asked the court to expunge his convictions on the misdemeanor charges. The State again opposed Filtz's request for expungement. The court stated that it would like "feedback" from the victim before deciding whether to expunge Filtz's convictions. The court therefore scheduled an expungement hearing on a later date.

Prior to the expungement hearing, the State submitted a letter from the victim objecting to expungement. Filtz, in turn, submitted several letters in support of his request for expungement. After considering the parties' arguments during the expungement hearing, the circuit court stated that it was "torn" because Filtz had been "an exemplary person since the crime was committed" and was "an exemplary young person prior to it happening." The court determined, however, that expungement was not appropriate given the seriousness of the offenses. The court reasoned, based on the victim's letter, that expungement would still be harmful to the victim, even "four years past the crime." The court also noted that Filtz had already benefitted from the dismissal of the child pornography and third-degree sexual assault charges. In addition, the court noted that Filtz had "accomplished a lot" since he was convicted, which suggested that having the misdemeanor convictions on his record would not "hold[] him back."

The circuit court subsequently entered a written order denying Filtz's request for expungement. Filtz then moved for postconviction relief, arguing that the court had erred by failing to make a decision on expungement at the time of sentencing. Filtz also argued that when the court eventually made a decision regarding expungement, the court erred by considering information that was not available at the time of sentencing—specifically, the crimes' continuing impact on the victim four years after the fact.

The circuit court issued a written decision denying Filtz’s postconviction motion. Citing *State v. Matasek*, 2014 WI 27, 353 Wis. 2d 601, 846 N.W.2d 811, the court agreed that it should have made a decision regarding expungement at the time of sentencing. The court concluded, however, that based solely on the information known to the court at the time of sentencing, Filtz’s postsentencing request for expungement was properly denied.

The circuit court noted that, under WIS. STAT. § 973.015, a court may order expungement if it determines that the defendant will benefit from expungement and that society will not be harmed by expungement. *See* § 973.015(1m)(a)1. Addressing the first of these factors, the court stated that Filtz would “[c]learly” benefit from expungement.

Turning to the second factor, the circuit court stated it is “difficult” to conclude that society will not be harmed by expungement in felony cases and cases involving physical and mental harm to another. With respect to this case, specifically, the court explained that it was aware at the time of sentencing “of the facts underlying the charge and the trauma it caused the victim and her family.” Based on that knowledge, the court stated it “did not feel confident [at the time of sentencing] in 2019 that society would not be harmed by [expungement] (or, in other words, that withholding information about the conviction would not harm another individual).” The court explained that if it had been confident at the time of sentencing that society would not be harmed by expungement, it “would have made that finding then and would not have deferred it for two years.” Consequently, the court concluded “that factor was not met in 2019.”

The no-merit report addresses whether the circuit court erred by denying Filtz’s postsentencing request for expungement and his subsequent postconviction motion for

expungement. We agree with counsel’s description, analysis, and conclusion that these potential issues lack arguable merit.

In particular, we note that although the circuit court did not make a decision regarding expungement at the time of sentencing, as required by *Matasek*, the remedy for that error was for the court to address Filtz’s request for expungement after sentencing. *See, e.g., State v. Armstrong*, No. 2016AP97-CR, unpublished slip op. ¶14 (WI App Aug. 17, 2016) (concluding that “the holding in *Matasek* does not bar a circuit court, which alone decided to defer an expungement request, from later deciding that request after probation has been successfully completed”).² As explained in the no-merit report, when addressing expungement after sentencing, the court “explained the reasons why [expungement] would not have been granted if it had been decided at the time of sentencing.” We agree with appellate counsel that the court’s conclusion in that regard was “logical” and was “based on facts in the record.” As such, there would be no arguable merit to a claim that the court erroneously exercised its discretion by denying Filtz’s postsentencing request for expungement or his postconviction motion for expungement. *See State v. Helmbrecht*, 2017 WI App 5, ¶8, 373 Wis. 2d 203, 891 N.W.2d 412 (2016) (noting that the decision to expunge a conviction “involves the circuit court’s discretion, which, on review, an appellate court will not disturb unless erroneously exercised”).

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

Therefore,

² An unpublished opinion authored by a single judge and issued on or after July 1, 2009, may be cited for its persuasive value. WIS. STAT. RULE 809.23(3)(b).

IT IS ORDERED that the orders are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Frances Philomene Colbert is relieved of her obligation to further represent Raymond Filtz 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