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DISTRICT III

November 22, 2022

To:

Hon. Melissia R. Mogen
Circuit Court Judge
Electronic Notice

Jacqueline Baasch
Clerk of Circuit Court
Burnett County Courthouse
Electronic Notice

James Jay Rennieke
Electronic Notice

Scott A. Szabrowicz
Electronic Notice

Richard Raymond Connors
7325 Hayden Lake Road
Danbury, WI 54830

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

2022AP853-CRNM State of Wisconsin v. Richard Raymond Connors
(L. C. No. 2020CF256)

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 Richard Connors has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding that no grounds exist to challenge the circuit court's award of restitution. Connors 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 arguable merit to any issue that

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.

could be raised on appeal. Therefore, we summarily affirm the amended judgment awarding restitution. *See* WIS. STAT. RULE 809.21.

In September 2020, a criminal complaint was filed charging Connors with theft of moveable property (value exceeds \$10,000 but does not exceed \$100,000) and receiving stolen property (value exceeds \$10,000), both counts as a party to the crime. The complaint alleged that a skid steer, trailer, and three attachments to the skid steer were taken from a job site without the owner's consent. The equipment was later found at Connors' residence.

Pursuant to a plea agreement, the State amended the receiving stolen property charge to a misdemeanor charge of criminal damage to property, as a party to the crime. Connors entered a guilty plea to that amended charge, and in exchange for his plea, the theft of moveable property charge was dismissed outright. At the same time, Connors also entered guilty pleas to four additional misdemeanor charges in two other cases, and various other charges were dismissed and read in for purposes of sentencing. On the criminal damage to property charge at issue in this case, the circuit court withheld sentence and placed Connors on probation for a period of three years. A judgment of conviction was entered on March 9, 2021.

The circuit court subsequently held a restitution hearing on March 26, 2021. At the hearing, the victim submitted a list of the parts of the skid steer that he believed had been damaged between the time the skid steer was taken from the job site and the time it was recovered. The victim also submitted an exhibit that provided an implement dealer's estimate of the cost to repair or replace the damaged parts. Based on that exhibit, the victim claimed that the total cost to repair the damage to the skid steer would be \$10,525.89.

On cross-examination, the victim conceded that the skid steer was a 1992 or 1994 model and that he had purchased it sometime around 2015. He further testified that he had not been at the job site for six to eight weeks before the skid steer was reported stolen. The victim conceded that he did not know who, specifically, had damaged certain parts of the skid steer. He also conceded that he had not measured the degree of wear and tear on various parts of the skid steer that he claimed had been damaged. On redirect examination, the victim testified that he was familiar with the skid steer's general condition because he had taken the skid steer apart to replace various parts about three years earlier.

Connors conceded during the restitution hearing that he had caused damage to the skid steer's front engine cover, hydraulic hose, and quick coupler. Regarding his ability to pay restitution, Connors testified that he was thirty-nine years old, had a high school equivalency diploma, and also had some additional certifications. He testified that he was in good health and that upon his release from custody, he planned to return to work at a mechanic's shop, where he had previously earned \$15 per hour. Connors also testified that he had been living with his parents before his arrest.

The circuit court entered a written order concerning restitution on March 31, 2021. The court found that there was a "causal nexus" between the crime considered at sentencing and the majority of the victim's claimed damages. *See State v. Canady*, 2000 WI App 87, ¶9, 234 Wis.2d 261, 610 N.W.2d 147. The court reasoned that Connors "pled guilty to the criminal damage to property [charge] and admitted guilt in damaging the property of the victim, as a party to a crime with another unidentified, uncharged individual." The court also noted that the skid steer was found at Connors' parents' residence and that Connors had admitted damaging certain

parts of the skid steer. The court stated that it did not find Connors' testimony credible that he had damaged only the skid steer's front engine cover, hydraulic hose, and quick coupler.

Nevertheless, the circuit court concluded that the victim had not presented sufficient evidence "to establish that all of the parts listed for replacement were the result of the actions of [Connors] in damaging the property, as some could reasonably be looked at as normal wear and tear due to the age of the machine." The court found credible the victim's testimony that he had "personally inspected the machine three years ago and acknowledged any defects in the machine at that time." The court noted, however, that it had been "some time since the inspection" and that "normal wear and tear on a machine of this age is typical and expected." The court found that there was sufficient evidence

to establish the reasonableness of the amounts and expenses spent for the damage to the machine as to 75% of the listed amount in the invoice provided for the service and parts that would not be considered as existing on the machine as normal wear and tear since the last inspection.

The court therefore determined that Connors was "responsible for ... restitution in the amount of \$7,896.74, representing 75% of the parts and service to bring the machine up to the condition it was in when in the possession of [the] victim."

Turning to Connors' ability to pay, *see* WIS. STAT. § 973.20(13)(a)2.-3., the circuit court noted that Connors had been released from custody the day after the restitution hearing and had testified that he would be earning a "decent wage" upon his release. The court also noted that Connors "resides with his parents and does not have other living and maintenance expenses." Under these circumstances, the court found that Connors had "the ability to make payments in the amount of \$500 per month" and that any "financial discomfort" that Connors might suffer as

a result of the restitution order was “consistent with [the] rehabilitative goals of the justice system.” See *State v. Foley*, 153 Wis. 2d 748, 754, 451 N.W.2d 796 (Ct. App. 1989). The court further stated, however, that if Connors were to suffer a “severe financial hardship,” he could ask the court for a financial review hearing, at which time the court would “review his financial records and means and determine whether the amount should be modified.”

Connors filed a notice of intent to pursue postconviction relief, which stated that he intended to seek postconviction relief from “the judgment and order[] entered in this case on March 31, 2021, in which the defendant was ordered to pay restitution in the sum of \$7,896.74 at the monthly rate of \$500.00.” The circuit court subsequently entered an amended judgment of conviction on April 26, 2021, which codified the court’s March 31 restitution order by setting restitution at \$7,896.74 and requiring Connors to pay \$500 per month toward that amount. Connors’ appointed appellate attorney ultimately filed a no-merit notice of appeal, stating that Connors appeals “from the judgment of conviction and sentence as to the restitution judgment and order entered March 31, 2021.”

In the no-merit report, appellate counsel asserts that the only issue before the court in this appeal is whether there would be arguable merit to a claim challenging the circuit court’s award of restitution. Counsel further asserts that such a claim would lack arguable merit because the record shows that the court properly exercised its discretion by awarding \$7,896.74 in restitution and requiring Connors to pay \$500 per month toward that amount. See *State v. Johnson*, 2005 WI App 201, ¶10, 287 Wis. 2d 381, 704 N.W.2d 625 (stating that circuit courts “have discretion in deciding on the amount of restitution and in determining whether the defendant’s criminal activity was a substantial factor in causing any expenses for which restitution is claimed”). Upon our independent review of the record, we agree with counsel’s description, analysis, and

conclusion that this potential issue lacks arguable merit. Accordingly, we do not address it further.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Scott A. Szabrowicz is relieved of further representing Richard Connors 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