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DISTRICT I

February 28, 2023

To:

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Montrell J. Evans 687721
Prairie Du Chien Correctional Institution
500 E. Parrish Street
Prairie Du Chien, WI 53821-2730

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

2021AP476-CRNM State of Wisconsin v. Montrell J. Evans (L.C. # 2018CF1253)

Before Brash, C.J., Donald, P.J., and Dugan, J.

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).

Montrell J. Evans appeals from his judgment of conviction, entered after he pled guilty to second-degree reckless homicide, as a party to a crime. His appellate counsel, Attorney Carl W. Chesshir, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).¹ Evans was advised of his right to file a response, but did not do so. Upon this court's independent review of the record, as mandated by *Anders*, and

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

counsel's report, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

In March 2018, officers from the West Allis Police Department responded to a call to an apartment on West Greenfield Avenue where they found K.K., who was deceased from an apparent drug overdose. K.K.'s roommate and girlfriend, J., had called 911 after she woke up and found K.K. unresponsive on the kitchen floor. J. explained that both she and K.K. were regular users of crack cocaine and heroin, and that K.K. would inject and snort both drugs.

J. cooperated with police in their investigation of who had delivered the drugs that K.K. had ingested, causing his death. J. provided detectives with information regarding their drug supplier, who she identified as Evans. J. also participated in a controlled buy with Evans, and he was subsequently arrested.

Evans was charged with conspiracy to commit delivery of a controlled substance (heroin); conspiracy to commit delivery of a controlled substance (cocaine); possession with the intent to deliver heroin, as a party to a crime; and possession with intent to deliver cocaine, as a party to a crime. A charge of first-degree reckless homicide, as a party to a crime, for the delivery of the drugs to K.K., was subsequently added.

The matter proceeded to a jury trial in May 2019, which resulted in a mistrial being granted by the trial court.² It was rescheduled for a new trial; however, Evans chose instead to resolve the matter with a plea. Under the plea agreement, Evans pled guilty to second-degree reckless homicide, as a party to a crime. The other four charges of conspiracy to commit delivery of both heroin and cocaine, and possession with the intent to deliver both heroin and cocaine, were dismissed but read in, with the defense free to argue any sentence.

Evans was sentenced to eleven years of imprisonment, bifurcated as six years of initial confinement and five years of extended supervision. Restitution was also ordered in the amount of \$3,760.84, which was not disputed. Evans appeals.

Appellate counsel addresses two issues in the no-merit report. The first issue is whether the trial court properly accepted Evans' guilty plea. The trial court has a duty to ensure that a defendant's guilty plea was knowing, intelligent, and voluntary. *State v. Pegeese*, 2019 WI 60, ¶23, 387 Wis. 2d 119, 928 N.W.2d 590. The record reflects that the trial court complied with its duties for taking guilty pleas, pursuant to WIS. STAT. § 971.08, *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. This was done through a lengthy colloquy with Evans, which included the court reviewing with Evans the jury instructions for the charge of second-degree reckless homicide, as well as explaining party to a crime liability, and the potential penalties. The trial

² Evans' theory of defense at the trial, as described by his counsel during opening statements, was that K.K. died by suicide. The trial court subsequently determined that testimony relating to K.K.'s mental state was not relevant as it pertained to the reckless homicide charge against Evans, where the substantial factor for proving guilt is whether the defendant delivered the drugs that caused death. *See* WIS. STAT. § 940.02(2)(a)3. Therefore, the court granted Evans' request for a mistrial to allow for him to reassess his theory of defense.

court also informed Evans of the effects of read-in offenses, as recommended by *State v. Straszkowski*, 2008 WI 65, ¶97, 310 Wis. 2d 259, 750 N.W.2d 835.

Additionally, the record demonstrates that the trial court addressed the rights being waived by Evans, as explained in the plea questionnaire and waiver of rights form and the addendum; confirmed that Evans had reviewed with counsel the rights being waived when signing those forms; and confirmed with counsel that Evans had understood them. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827, 416 N.W.2d 627 (Ct. App. 1987). Therefore, we are satisfied that there is no arguable merit to a claim that the trial court failed to properly conduct the plea colloquy or that Evans' plea was anything other than knowing, intelligent, and voluntary.

The other issue addressed in the no-merit report is whether the trial court erroneously exercised its sentencing discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Our review of the record confirms that the court appropriately considered relevant sentencing objectives and factors. Specifically, the trial court noted the “devastating effects” that drugs have on “society at large and this case in particular” in its consideration of the sentencing factors.

We further note that the eleven-year sentence imposed by the trial court is well within the maximum twenty-five-year sentence authorized by law, *see* WIS. STAT. §§ 940.06(1), 939.50(3)(d), and thus is not unduly harsh or unconscionable, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. Therefore, this court is also satisfied that there is no arguable merit to a claim that the trial court erroneously exercised its sentencing discretion.

Our independent review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Evans further in this appeal.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Carl W. Chesshir is relieved of further representation of Evans 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