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DISTRICT II

March 15, 2023

To:

Hon. Bruce E. Schroeder
Circuit Court Judge
Electronic Notice

Jonathan D. Gunderson
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Casey J. Brown, #594555
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

Winn S. Collins
Electronic Notice

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

2022AP778-CRNM State of Wisconsin v. Casey J. Brown (L.C. #2017CF6)

Before Gundrum, P.J., Grogan and Lazar, 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).

Casey J. Brown appeals from a judgment convicting him of first-degree recklessly endangering safety as a repeater. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Brown filed a response. After reviewing the record, counsel's report, and Brown's response, we conclude there

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

are no issues with arguable merit for appeal. We summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Brown was convicted following a guilty plea to first-degree recklessly endangering safety as a repeater. He was accused of driving his vehicle towards a law enforcement officer while attempting to flee a traffic stop. The circuit court withheld sentence and placed Brown on probation.

Brown's probation was later revoked due to numerous rules violations, including new criminal offenses,² and he appeared before the circuit court for sentencing after revocation. There, the court imposed a sentence of five years of initial confinement and five years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether the circuit court properly exercised its discretion in sentencing Brown after revocation and whether grounds exist to justify sentence modification. This court is satisfied that the no-merit report correctly analyzes the issues it raises as without merit.

As noted, Brown filed a response to the no-merit report. In it, he complains that the circuit court misunderstood his mental health problems.³ He also complains that some

² The new criminal offenses included battery, criminal damage to property, resisting an officer, possession of drug paraphernalia, driving under the influence of alcohol, fleeing/eluding an officer, and bail jumping.

³ According to Brown's trial counsel, Brown suffered from PTSD (post-traumatic stress disorder) and anxiety issues. In its sentencing remarks, the circuit court discussed ADHD (attention deficit hyperactivity disorder) and its overuse as a criminal defense. It appears that the court may have thought Brown suffered from ADHD.

accusations in his revocation report were not proven and may have angered the court. Additionally, he asserts new factors based on letters he received from the victim⁴ and misconduct by the circuit court.⁵

We are not persuaded that Brown’s response presents an issue of arguable merit. To begin, Brown’s precise mental health diagnoses were not relevant to the circuit court’s sentence. The court’s comments made clear that Brown’s mental health problems—whether they included ADHD or not—did not amount to a legal defense and would not excuse his behavior. Moreover, a sentencing court may permissibly consider a defendant’s uncharged and unproven offenses. *See State v. Salas Gayton*, 2016 WI 58, ¶23, 370 Wis. 2d 264, 882 N.W.2d 459. Thus, the court could reasonably consider accusations in Brown’s revocation report that did not result in criminal convictions. Finally, Brown’s alleged new factors are conclusory and not supported by any evidence.

Our review of the record discloses no other potential issues for appeal.⁶ Accordingly, this court accepts the no-merit report, affirms the judgment of conviction, and discharges appellate counsel of the obligation to represent Brown further in this appeal.

⁴ Brown did not include the letters in his response, and it is unclear whether the letters were from the victim in this case. Brown notes only that one letter was received after sentencing “from a mental health institution from someone who struggles with addiction”

⁵ According to Brown, the circuit court judge “has recently been dis[]barred due to some indesgression [sic] with his ethics.” Brown acknowledges that he is not “100[%] sure to the details of this [claim.]” We are unaware of any disciplinary case against the circuit court judge that resulted in disbarment.

⁶ Any challenge to the underlying conviction is outside the scope of this appeal. *See State ex rel. Marth v. Smith*, 224 Wis. 2d 578, 582 n.5, 592 N.W.2d 307 (Ct. App. 1999). In addition, “review of probation revocation is by way of certiorari review to the court of conviction.” *Id.* at 583.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Jonathan D. Gunderson is relieved of further representation of Casey J. Brown in this appeal. *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