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DISTRICT I

April 25, 2023

To:

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Circuit Court Judge
Electronic Notice

Christopher D. Sobic
Electronic Notice

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Clerk of Circuit Court
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Christopher Lamar Tucker 354092
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You are hereby notified that the Court has entered the following opinion and order:

2022AP838-CRNM State of Wisconsin v. Christopher Lamar Tucker
(L.C. # 2017CF5752)

Before Brash, C.J., Donald, P.J., and White, 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).

Christopher Lamar Tucker appeals a judgment of conviction entered upon his guilty pleas to four felonies: first-degree reckless injury by use of a dangerous weapon; attempted armed robbery; possessing a firearm while a felon; and fleeing an officer. Tucker's appellate counsel, Attorney Christopher D. Sobic, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).¹ Tucker did not file a response. Upon

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

consideration of the no-merit report and an independent review of the record as mandated by *Anders*, we conclude that no arguably meritorious issues exist for an appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

The State alleged in a criminal complaint that on December 11, 2017, D.B. was in his parked car at a gas station in Milwaukee when Tucker drove up in a Pontiac Grand Prix. Tucker got into the front passenger seat of D.B.'s car while Tucker's accomplice opened D.B.'s driver's-side door.² Tucker displayed a handgun and demanded: "Give me everything you have." When D.B. responded that he did not have anything, Tucker instructed his accomplice to search D.B.'s pockets. Tucker next shot D.B. three times in the leg, and Tucker and his accomplice then ran back to the Pontiac and drove away. A police officer on duty saw the Pontiac on the road approximately five minutes later. The officer activated his squad car's lights and sirens and attempted to stop the Pontiac. The driver, who police subsequently identified as Tucker, instead accelerated, leading police on an eleven-minute chase through Milwaukee city streets. The Pontiac reached speeds exceeding eighty miles per hour and failed to stop for numerous red lights before crashing into a residence. Tucker and his passenger then fled on foot, but police caught Tucker and arrested him.

A search of Tucker's Pontiac following the arrest uncovered a silver handgun in the glove compartment. An investigation revealed that, on October 2, 2009, Tucker was convicted of

² The accomplice was not named in the complaint, and the record indicates that the accomplice was never identified.

second-degree reckless injury and that he was confined for that offense until his release to extended supervision on April 5, 2016.

The State charged Tucker with first-degree reckless injury by use of a dangerous weapon, attempted armed robbery, possession of a firearm by a felon, and fleeing an officer, all as a habitual offender. Tucker decided to resolve the charges with a plea agreement. Pursuant to its terms, the State moved to dismiss the allegations that Tucker was a habitual offender. Tucker pled guilty to the four charges as amended, and the State promised to seek a prison sentence without specifying a recommended term of imprisonment. The State was free to request that the circuit court impose sentences consecutive to the revocation sentence that Tucker was already serving for the 2009 conviction, and Tucker was free to recommend whatever dispositions he believed were appropriate.

The case proceeded to sentencing. For first-degree reckless injury by use of a dangerous weapon, Tucker faced maximum penalties of a thirty-year term of imprisonment and a \$100,000 fine, and he also faced a mandatory minimum penalty of five years of initial confinement. *See* WIS. STAT. §§ 940.23(1)(a), 939.50(3)(d), 939.63(1)(b), 973.123(1)-(2),(3)(a) (2017-18). The circuit court imposed twenty-two years and six months of imprisonment bifurcated as fifteen years of initial confinement and seven years and six months of extended supervision. Tucker faced maximum penalties of twenty years of imprisonment and a \$50,000 fine for attempted armed robbery. *See* WIS. STAT. §§ 943.32(2), 939.50(3)(c), 939.32(1g)(a) (2017-18). The circuit court imposed a nine-year term of imprisonment bifurcated as six years of initial confinement and three years of extended supervision. Tucker also faced maximum penalties of ten years of imprisonment and a \$25,000 fine for possessing a firearm while a felon. *See* WIS. STAT.

§§ 941.29(1m)(a), 939.50(3)(g) (2017-18). In this regard the circuit court imposed four years and six months of imprisonment bifurcated as three years of initial confinement and one and one-half years of extended supervision. Finally, Tucker faced maximum penalties of three years and six months of initial confinement and a \$10,000 fine for fleeing an officer. *See* WIS. STAT. §§ 346.04(3), 346.17(3)(a), 939.50(3)(i) (2017-18). The circuit court imposed an evenly bifurcated three-year term of imprisonment. The circuit court ordered Tucker to serve each of his sentences in this case consecutively to each other and to his revocation sentence.

At a restitution hearing conducted after sentencing, the circuit court ordered Tucker to pay restitution to the Crime Victim Compensation Program (CVCP) in the amount of \$2,786, representing seventy percent of the money that the CVCP paid to D.B. as compensation for lost wages; the circuit court also ordered Tucker to pay restitution directly to D.B. in the amount of \$8,680, representing seventy percent of the money that D.B. claimed to have paid to a third party for in-home care.³ In postconviction proceedings, the circuit court granted Tucker's motion to vacate the entirety of the restitution awarded to D.B. Tucker appeals.

In the no-merit report, appellate counsel discusses the potential issues of whether Tucker entered his guilty pleas knowingly, intelligently, and voluntarily, whether the circuit court properly exercised its sentencing discretion, and whether Tucker could mount an arguably meritorious challenge to the restitution awarded to the CVCP. This court is satisfied that appellate counsel properly analyzed these issues, and we agree with appellate counsel that further

³ The circuit court ordered Tucker to pay seventy percent of the amounts sought as restitution in light of his limited financial resources.

pursuit of these issues would lack arguable merit. Only a brief additional discussion is warranted regarding aspects of the plea hearing and the restitution award.

Turning first to the plea hearing, we observe that, among the circuit court’s mandatory duties during a plea colloquy is the obligation to “establish that a defendant understands every element of the charges to which he pleads[.]” *State v. Brown*, 2006 WI 100, ¶58, 293 Wis. 2d 594, 716 N.W.2d 906. The circuit court may establish the defendant’s requisite understanding in a variety of ways, including: “summarize the elements of the offenses on the record, or ask defense counsel to summarize the elements of the offenses, or refer to a prior court proceeding at which the elements were reviewed, or refer to a document signed by the defendant that includes the elements.” *Id.*, ¶56.

In this case, the circuit court established on the record that Tucker had reviewed and understood the jury instructions attached to the plea questionnaire that he had signed and filed. One of those jury instructions, WIS JI—CRIMINAL 1250, described the elements of first-degree reckless injury, but the instruction did not address the “use of a dangerous weapon” element of the crime to which Tucker pled guilty. *Cf. State v. Peete*, 185 Wis.2d 4, 21, 517 N.W.2d 149 (1994) (explaining that when the State alleges, pursuant to WIS. STAT. § 939.63, that the defendant committed a crime by use of a dangerous weapon, the allegation describes an element of the crime). Similarly, the jury instructions attached to the plea questionnaire included WIS JI—CRIMINAL 580, and WIS JI—CRIMINAL 1479, which together describe the elements of attempted robbery by the use or threat of force; Tucker, however, faced the charge of attempted *armed* robbery, which includes an additional element, namely, that the defendant “used or threatened to use a dangerous weapon.” *Compare* WIS JI—CRIMINAL 1479 (describing the four elements of

robbery by use of force) *with* WIS JI—CRIMINAL 1480 (describing the five elements of armed robbery). The circuit court therefore supplemented the information reflected in the jury instructions by explaining the missing elements on the record.

Specifically, as to the charge of first-degree reckless injury by use of a dangerous weapon, the circuit court explained to Tucker that the elements of the crime included proof that the defendant committed the crime while “using a dangerous weapon.” As to the charge of attempted armed robbery, the circuit court explained to Tucker that the elements included proof that the defendant committed the crime “by use or threatening use of a dangerous weapon.” The circuit court also explained to Tucker that by pleading guilty, he was giving up the right to make the State prove the elements of the crimes beyond a reasonable doubt. Tucker said that he understood. Accordingly, we agree with appellate counsel’s assessment that the plea colloquy satisfied the circuit court’s obligations when accepting a guilty plea. The incomplete set of jury instructions attached to the plea questionnaire does not provide an arguably meritorious basis for further proceedings.

We next turn to whether Tucker could pursue an arguably meritorious challenge to the restitution order requiring that he pay \$2,786 to the CVCP. We conclude that he could not do so. In postconviction proceedings, Tucker successfully challenged the restitution awarded to D.B. During the course of those proceedings, Tucker expressly and repeatedly asserted that the circuit court had correctly awarded \$2,786 as restitution to the CVCP and that the circuit court should not amend that order. The circuit court adopted Tucker’s position over the State’s contention that the award to the CVCP should be increased. Accordingly, we conclude that any challenge to the award would be frivolous within the meaning of *Anders*. See *State v. Gove*, 148 Wis. 2d

936, 944, 437 N.W.2d 218 (1998) (reflecting that a party may not advocate for one position during the circuit court proceeding and then argue on appeal that the circuit court erred by accepting that position); *see also State v. Leighton*, 2000 WI App 156, ¶56, 237 Wis. 2d 709, 616 N.W.2d 126 (rejecting a postconviction challenge to restitution where the defendant previously stipulated to the amount of restitution ordered).

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Christopher D. Sobic is relieved of any further representation of Christopher Lamar Tucker. *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