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DISTRICT II

May 10, 2023

To:

Hon. L. Edward Stengel
Circuit Court Judge
Electronic Notice

Andrew H. Morgan
Electronic Notice

Chris Koenig
Clerk of Circuit Court
Sheboygan County Courthouse
Electronic Notice

Joel Urmanski
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William McKee III
10002 S. Normal
Chicago, IL 60628

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

2021AP531-CRNM	State of Wisconsin v. William McKee, III (L.C. #2018CM331)
2021AP532-CRNM	State of Wisconsin v. William McKee, III (L.C. #2017CF76)

Before Neubauer, 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).

In these consolidated cases, William McKee, III, appeals from judgments convicting him of making a bomb scare and using a computerized communication system to threaten harm. 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). McKee received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the records and

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

counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgments. *See* WIS. STAT. RULE 809.21.

McKee was convicted following a jury trial of making a bomb scare and using a computerized communication system to threaten harm. The first charge stemmed from an incident in which he called his ex-girlfriend's place of employment and indicated that there was a bomb in its mailbox. The second charge stemmed from a series of text messages in which he threatened to kill his ex-girlfriend and another man. For his actions, the circuit court imposed three years of probation with ninety days in jail. These no-merit appeals follows.

The no-merit report addresses whether the evidence at McKee's jury trial was sufficient to support his convictions. When reviewing the sufficiency of the evidence, we may not substitute our judgment for that of the jury unless the evidence, viewed most favorably to the State and the convictions, is so lacking in force and probative value that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Our review of the trial transcript persuades us that the State produced ample evidence to convict McKee of his crimes. That evidence included phone records and text messages. It also included testimony from the victim, who identified both the phone number of the bomb threat and the threatening text messages as coming from McKee. We agree with counsel that any challenge to the sufficiency of the evidence would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The records reveal that the court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197

(citation omitted). Moreover, McKee's ability to challenge the sentence imposed is limited by the fact that it is consistent with his counsel's recommendation. *See State v. Magnuson*, 220 Wis. 2d 468, 471-72, 583 N.W.2d 843 (Ct. App. 1998) (explaining that defendants may not attack their sentence on appeal when the circuit court imposes the sentence requested by them). We agree with counsel that a challenge to the court's sentencing discretion would lack arguable merit.

The no-merit report then addresses McKee's request to represent himself. Specifically, in the middle of trial, McKee asked the court that he be allowed to represent himself. After a colloquy with McKee, the circuit court granted the request and required McKee's counsel to remain on the case as advisory counsel. Thereafter, McKee and counsel worked together, with McKee examining witnesses/making arguments and counsel handling such matters as motions, proposed jury instructions, and verdicts. McKee subsequently had counsel represent him at sentencing. We see no issue of arguable merit arising out of the hybrid approach. Additionally, nothing in the record indicates this hybrid representation infringed upon McKee's Sixth Amendment right to counsel.

Finally, the no-merit report addresses McKee's concern that the State only put a portion of the phone records into evidence instead of all of the records. However, the records were provided to defense in discovery, and there is no requirement that the State put all the records into evidence. We agree with counsel that there is no arguable merit to allege the State's exhibits were incomplete.

In addition to the foregoing issues, we considered other potential issues that arise in cases tried to a jury, *e.g.*, jury selection, objections during trial, confirmation that the defendant's

waiver of the right to testify is valid, use of proper jury instructions, and propriety of opening statements and closing arguments. Here, the jury was selected in a lawful manner. Objections during trial were properly ruled on. When McKee elected not to testify, the circuit court conducted a proper colloquy to ensure that his waiver was valid. The jury instructions accurately conveyed the applicable law and burden of proof. No improper arguments were made to the jury during opening statements or closing arguments.

Our independent review of the records does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Andrew H. Morgan of further representation in these matters.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Andrew H. Morgan is relieved of further representation of William McKee, III, in these matters. *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