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DISTRICT III

May 9, 2023

To:

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Circuit Court Judge
Electronic Notice

Shannon Anderson
Clerk of Circuit Court
Washburn County Courthouse
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Chad P. LaPointe 464221
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2021AP1051-CRNM State of Wisconsin v. Chad P. LaPointe (L. C. No. 2019CF59)

Before Stark, P.J., Hruz and Gill, 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).

Counsel for Chad LaPointe has filed a no-merit report concluding that no grounds exist to challenge LaPointe's convictions for threatening a law enforcement officer and substantial battery, both counts as a repeater. LaPointe was informed of his right to file a response to the no-merit report, and he has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of

conviction and the order denying LaPointe's postconviction motion for resentencing. *See* WIS. STAT. RULE 809.21 (2021-22).¹

The State charged LaPointe with threatening a law enforcement officer, suffocation, substantial battery, and three counts of misdemeanor bail jumping—all six offenses as a repeater. The charges arose from allegations that LaPointe physically assaulted Amy,² a former girlfriend with whom LaPointe was staying after his recent release from jail. The State alleged that LaPointe threw Amy to the ground, punched her in the face repeatedly, and, when Amy attempted to yell for help, covered her nose and mouth until she nearly passed out. The State further alleged that during his transport to the jail, LaPointe told the police officer: “You’re a fucking dead bitch,” and “I know where you live.” LaPointe also told the officer that he had a militia, adding, “I’m going to strangle you with my legs.”

In exchange for his no-contest pleas to threatening a law enforcement officer and substantial battery, both as a repeater, the State agreed to recommend that the circuit court dismiss and read in the remaining charges. The parties agreed to jointly recommend that the court impose and stay a sentence of two years of initial confinement followed by three years of extended supervision, and place LaPointe on probation for three years. The court ultimately departed from the joint recommendation. Out of maximum possible sentences totaling thirteen and one-half years, the court imposed consecutive sentences resulting in an aggregate nine and

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

² Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use a pseudonym instead of the victim's name.

one-half year term, consisting of five and one-half years of initial confinement followed by four years of extended supervision.

Before imposing sentences authorized by law, the circuit court considered the seriousness of the offenses; LaPointe's character; the need to protect the public; and the mitigating factors LaPointe raised. See *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court placed particular emphasis on LaPointe's "lengthy and violent criminal history," noting that five of the last seven times he was placed on supervision, that supervision was revoked. The court added:

The COMPAS^[3] evaluation indicates that this defendant is a significant risk or a high risk to reoffend, and he is a high risk to reoffend in a violent manner. That makes him a danger to the public and a high risk to reoffend which calls out for protection of the public as a primary, if not significant concern for the Court to consider in sentencing Mr. LaPointe[.]

Noting LaPointe's anger issues, health issues, and AODA issues, the court acknowledged that LaPointe "has a myriad of rehabilitative needs that to date have not been met, despite multiple opportunities at rehabilitation within the community." The court also recognized that if LaPointe was placed on probation, "[i]t would send a terrible message to the victim, to the public, and to Mr. LaPointe that no matter how many times you go back to the well, there's always going to be another chance, even if you're violent and even if you're threatening." The court ultimately determined that placing LaPointe on probation "once again" would "unduly depreciate the seriousness of his conduct" and would not be supported "by the other sentencing criteria [that the court is] obligated to consider in fashioning just and fair sentences."

³ Correctional Offender Management Profiling for Alternative Sanctions.

LaPointe filed a postconviction motion for resentencing, claiming that the circuit court improperly relied on the COMPAS risk assessment, contrary to *State v. Loomis*, 2016 WI 68, 371 Wis. 2d 235, 881 N.W.2d 749. LaPointe also asserted that his trial counsel was ineffective by failing to object to the court’s “erroneous reliance on the COMPAS risk assessment.” In *Loomis*, our supreme court concluded that the COMPAS assessment could be considered at sentencing, but the court circumscribed its use as follows:

[A] sentencing court may consider a COMPAS risk assessment at sentencing subject to the following limitations. As recognized by the Department of Corrections, the [presentence investigation report] instructs that risk scores may not be used: (1) to determine whether an offender is incarcerated; or (2) to determine the severity of the sentence. Additionally, risk scores may not be used as the determinative factor in deciding whether an offender can be supervised safely and effectively in the community.

Importantly, a circuit court must explain the factors in addition to a COMPAS risk assessment that independently support the sentence imposed. A COMPAS risk assessment is only one of many factors that may be considered and weighed at sentencing.

Id., ¶¶98-99.

After a *Machner*⁴ hearing, the circuit court denied the motion, concluding that its reference to the COMPAS assessment was not a singularly determinative factor in deciding the severity of LaPointe’s sentences. Rather, the severity of the sentences was based on the court’s consideration and extensive discussion of all of the sentencing factors. The court determined that in the context of the entirety of its sentencing comments, it was an overstatement to claim that the court put undue weight on the COMPAS assessment in imposing sentence. [R.94:30-31] With respect to trial counsel’s performance, the court recounted counsel’s testimony that he

⁴ *State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

likely would have objected if he thought the court was putting impermissible weight on the COMPAS assessment. Based on counsel's testimony, the court likewise rejected LaPointe's claim that his trial counsel's performance was deficient or otherwise prejudicial to LaPointe at the sentencing hearing.

The no-merit report addresses whether LaPointe knowingly, intelligently, and voluntarily entered his no-contest pleas; whether the circuit court properly exercised its sentencing discretion; whether the court erred by denying LaPointe's postconviction motion for resentencing; and whether there are any grounds to challenge the effectiveness of LaPointe's trial counsel. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that there is no arguable merit to any of these issues.

We note that during the plea colloquy, the circuit court failed to advise LaPointe of the deportation consequences of his pleas, as mandated by WIS. STAT. § 971.08(1)(c). Because the record shows that LaPointe is a United States citizen not subject to deportation, any challenge to the pleas on this basis would lack arguable merit. The no-merit report otherwise sets forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further. Our independent review of the record discloses no other potential issue for appeal.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dennis Schertz is relieved of his obligation to further represent Chad LaPointe 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