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DISTRICT III

May 31, 2023

To:

Hon. R. Michael Waterman
Circuit Court Judge
Electronic Notice

Kristi Severson
Clerk of Circuit Court
St. Croix County Courthouse
Electronic Notice

Karl E. Anderson
Electronic Notice

Winn S. Collins
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Kathleen Henry
Electronic Notice

Justin Dennis Krizan 558099
Jackson Correctional Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2021AP1102-CRNM State of Wisconsin v. Justin Dennis Krizan (L. C. No. 2018CF482)

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).

Justin Krizan appeals from a judgment convicting him of second-degree reckless endangerment and from an order denying his postconviction motion for sentence modification. Attorney Kathleen Henry has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22).¹ Krizan was informed of the right to respond to the no-merit report but he has not filed a response. Having independently reviewed the entire record

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

as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we conclude that counsel will be allowed to withdraw and the judgment and order shall be summarily affirmed.

The State charged Krizan with three felony counts of second-degree reckless endangerment; nine felony counts of bail jumping; battery, resisting an officer, and criminal damage to property. The charges all arose out of a road rage incident involving Krizan and his subsequent failure to cooperate with investigating law enforcement officers. Krizan eventually pled guilty to one count of second-degree reckless endangerment. In exchange, the other fourteen counts were dismissed as read-in offenses. The circuit court accepted Krizan's plea after conducting a plea colloquy and reviewing Krizan's signed plea questionnaire and waiver of rights form, with attached jury instructions.

The circuit court subsequently held a sentencing hearing at which the parties addressed the presentence investigation report, provided sentencing recommendations, and Krizan exercised his right of allocution. After hearing from the parties, the court discussed the proper sentencing factors, including the gravity of the offense, the character of the offender, and the need to protect the public. The court then sentenced Krizan to three years' initial confinement followed by three years' extended supervision, with eligibility for the Challenge Incarceration Program and Substance Abuse Program. The court also awarded restitution in the amount of \$2,018.32. The court later amended the judgment of conviction to reflect 109 days of sentence credit.

Krizan moved for sentence modification, alleging that the lack of adequate treatment options in prison for his specific medical needs constituted a new factor. The circuit court determined that Krizan had failed to establish the existence of a new factor because the court was

well aware of Krizan's medical condition at the time of sentencing but it determined that a prison term was necessary to protect the public regardless of Krizan's needs. The court further noted that Krizan could pursue administrative remedies if he was dissatisfied with the medical care he was receiving in prison.

The no-merit report addresses whether there is any arguable basis to challenge Krizan's plea and sentence. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that neither of these issues has arguable merit. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further.

We note that Krizan's plea forfeited the right to raise other nonjurisdictional defects and defenses, including claimed violations of constitutional rights other than a double jeopardy issue that could be resolved based upon the record. *See State v. Kelty*, 2006 WI 101, ¶¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886; *see also State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. Our independent review of the record discloses no merit to any potential double jeopardy claim and no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*. Accordingly, counsel shall be allowed to withdraw, and the judgment of conviction and postconviction order will be summarily affirmed. *See WIS. STAT. RULE 809.21*.

Upon the foregoing,

IT IS ORDERED that the judgment of conviction and postconviction order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Kathleen Henry is relieved of any further representation of Justin Krizan in this matter pursuant to 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