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DISTRICT II

June 21, 2023

To:

Hon. J. Arthur Melvin III
Circuit Court Judge
Electronic Notice

Daniel Goggin II
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Joel D. Murn, #386058
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

Winn S. Collins
Electronic Notice

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

2022AP1360-CRNM State of Wisconsin v. Joel D. Murn (L.C. #2020CF1349)

Before Gundrum, P.J., Neubauer 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).

Joel D. Murn appeals from a judgment of conviction following no-contest pleas to one count of attempted first-degree intentional homicide and two counts of arson of property other than a building. Murn's appellate counsel, Daniel Goggin II, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Murn received a copy of the report, was advised of his right to file a response, but did not do so. We

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

have independently reviewed the record and the no-merit report as mandated by *Anders*. We conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm. *See* WIS. STAT. RULE 809.21.

In 2020, the State charged Murn with one count of attempted first-degree homicide, two counts of first-degree recklessly endangering safety, one count of arson to a building, and two counts of arson of property other than a building. According to the complaint, Murn threw gasoline on a woman as she was walking down a street and lit her on fire. The complaint further states that Murn set his grandparents' garage and multiple vehicles on fire.

Murn's counsel requested a competency evaluation after Murn refused to appear for two hearings. Counsel told the circuit court that he had concerns about Murn's ability to understand the proceedings. The circuit court ordered a competency evaluation. Following the evaluation, Murn's counsel stipulated that Murn was competent to proceed. Murn waived his right to a preliminary hearing and entered pleas of not guilty by reason of mental disease or defect (NGI). The circuit court ordered another competency evaluation to determine whether there was sufficient evidence to support Murn's special pleas. Based upon the experts' reports, Murn withdrew his NGI pleas.

The matter was ultimately resolved by a plea agreement, whereby Murn pled no contest to one count of attempted first-degree intentional homicide and two counts of arson of property other than a building. The remaining charges were dismissed and read in. The circuit court conducted a colloquy with Murn and accepted his pleas. The circuit court sentenced Murn to thirty-five years of initial confinement and twenty years of extended supervision on the

attempted homicide charge and eighteen months of initial confinement and two years of extended supervision on each of the arson charges. This appeal follows.

Appellate counsel's no-merit report addresses three issues: (1) whether there would be any arguable merit to challenging the circuit court's competency determination; (2) whether Murn's pleas were knowing, voluntary, and intelligent; and (3) whether the circuit court properly exercised its sentencing discretion.

We conclude that there is no arguable merit to challenging the circuit court's competency determination. "No person who lacks substantial mental capacity to understand the proceedings or assist in his or her defense may be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures." *State v. Byrge*, 2000 WI 101, ¶27, 237 Wis. 2d 197, 614 N.W.2d 477 (quoting WIS. STAT. § 971.13(1)). To determine legal competency, the circuit court considers a defendant's present mental capacity to understand and assist at the time of the proceedings. *Id.*, ¶31. A circuit court's competency determination should be reversed only when clearly erroneous. *Id.*, ¶45. In this case, the circuit court initially ordered a competency examination at counsel's request to determine whether Murn was competent to stand trial. Murn was evaluated by an expert, and a report was filed with the court. The report indicated that Murn was competent to proceed. At the hearing on the matter, Murn informed the court through his counsel that he did not wish to contest his competency to proceed. The circuit court found Murn competent, and the proceedings resumed. After Murn entered his NGI pleas, the circuit court ordered another competency evaluation. Following the return of two expert reports, Murn, through counsel, withdrew his NGI pleas. There is nothing in the no-merit report or the record that would support an arguably meritorious challenge to the circuit court's competency determination.

The no-merit report next addresses whether Murn’s pleas were entered knowingly, voluntarily, and intelligently. Our review of the record—including the plea questionnaire and waiver-of-rights form, the jury instructions, and the plea hearing transcript—confirms that the circuit court complied with its obligations for taking guilty pleas pursuant to WIS. STAT. § 971.08; *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986); and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Although the circuit court did not specifically address whether any threats or promises were made to Murn prior to entering his plea, Murn signed the plea questionnaire which includes the statement, “I have not been threatened or forced to enter this plea. No promises have been made to me other than those contained in the plea agreement.” At the plea hearing, counsel informed the circuit court that he explained the plea questionnaire to Murn and believed that Murn understood its terms. We agree with appellate counsel’s conclusion in the no-merit report that there is no arguable merit to seeking plea withdrawal based on a claim that Murn’s pleas were anything other than knowing, intelligent, and voluntary.

With regard to the circuit court’s sentencing decision, we note that sentencing is a matter for the circuit court’s discretion. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a circuit court must consider the principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others. See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. It must also determine which objective or objectives are of greatest importance. See *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the circuit court should consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public as well as additional factors it may wish to consider.

See *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the circuit court’s discretion. See *id.*

Our review of the record confirms that the circuit court appropriately considered relevant sentencing objectives and factors. Specifically, the circuit court focused on the “egregious” nature of Murn’s conduct. While the circuit court did discuss mitigating factors, it stated that Murn posed a threat to the community, particularly his family members. The resulting sentence was within the potential maximum authorized by law, see *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public’s sentiment, see *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Therefore, there would be no arguable merit to a challenge to the circuit court’s sentencing discretion.

Our independent review of the record reveals no other potential issues of arguable merit.

Therefore,

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 Daniel Goggin II is relieved of further representation of Joel D. Murn in this matter. See WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals