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DISTRICT IV

July 20, 2023

To:

Hon. Guy D. Dutcher
Circuit Court Judge
Electronic Notice

Katrina Rasmussen
Clerk of Circuit Court
Waushara County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Christina C. Starner
Electronic Notice

Dylan Jon Kohlhoff 476569
Stanley Correctional Inst.
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Stanley, WI 54768

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

2021AP2007-CRNM	State of Wisconsin v. Dylan Jon Kohlhoff (L.C. # 2018CF114)
2021AP2008-CRNM	State of Wisconsin v. Dylan Jon Kohlhoff (L.C. # 2018CF183)
2021AP2009-CRNM	State of Wisconsin v. Dylan Jon Kohlhoff (L.C. # 2020CF109)
2021AP2010-CRNM	State of Wisconsin v. Dylan Jon Kohlhoff (L.C. # 2020CM36)

Before Kloppenburg, Graham, and Nashold, 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).

Attorney Christina Starner, as appointed counsel for Dylan Jon Kohlhoff, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Kohlhoff filed a response to the report, and counsel filed a supplemental no-merit report. We conclude that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE

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

809.21. After our independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

The State of Wisconsin charged Kohlhoff with a combined total of six felonies and four misdemeanors in Waushara County Circuit Court case numbers 2018CF114, 2018CF183, 2020CF109, and 2020CM36. Kohlhoff entered into a global plea agreement encompassing all four cases. Pursuant to the plea deal, Kohlhoff pled no contest in case number 2018CF114 to possession of methamphetamine (count three), possession of THC as a second and subsequent offense (count four), and operating with a restricted controlled substance in the blood as a second offense (count five). In case number 2018CF183, Kohlhoff pled no contest to possession of methamphetamine and felony bail jumping, both as repeaters. In case number 2020CF109, Kohlhoff pled no contest to one count of criminal damage to property as a repeater. In case number 2020CM36, Kohlhoff pled no contest to two counts of disorderly conduct, both as repeaters. As part of the plea deal, the remaining counts in case numbers 2018CF114, 2018CF183, 2020CF109, and 2020CM36 were dismissed and read in. The State also dismissed three other criminal cases filed against Kohlhoff in their entirety, and agreed not to charge him for the offenses contained in two incident reports from the Waushara County Sheriff's Office. Kohlhoff also agreed under the terms of the plea deal to pay restitution in the following amounts: \$609.60 related to the uncharged incident reports, \$25.00 in case number 2018CF183, \$3,268.52 in case number 2020CF109, \$1,219.57 in case number 2019CM190, and \$609.60 in case number 2020CM36. The State agreed to recommend a sentence totaling four years of initial confinement and four years of extended supervision.

The no-merit report addresses whether Kohlhoff's pleas were entered knowingly, voluntarily, and intelligently. This court's independent review of the record reveals that the plea colloquy complied with the requirements of *State v. Bangert*, 131 Wis. 2d 246, 255-73, 389 N.W.2d 12 (1986), and WIS. STAT. § 971.08 relating to the nature of the charges, Kohlhoff's understanding of the proceedings and the voluntariness of the plea decision, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. The circuit court found that the criminal complaints provided a factual basis for the pleas. Nothing in the record, no-merit report, response, or supplemental report presents an arguably meritorious ground for plea withdrawal.

The no-merit report also discusses Kohlhoff's sentences. In case number 2018CF114, the circuit court withheld sentence and ordered two years of probation on counts three and four, and imposed 90 days of jail time and a fine of \$522.00 on count five. The terms of probation imposed on counts three and four in case number 2018CF114 were made consecutive to the sentence in case number 2018CF183, and the jail term on count five was made concurrent to the sentence in 2018CF183. In case number 2018CF183, the court ordered four years of initial confinement and two years of extended supervision on each count, to run concurrently with one another. On the single count in case number 2020CF109, the court withheld sentence and imposed two years of probation, to be served concurrently with the probation imposed in 2018CF114 but consecutive to the sentence in case number 2018CF183. In case number 2020CM36, the court withheld sentence on counts one and two and imposed two years of probation, to run concurrently with each other and with the probation imposed in case numbers 2018CF114 and 20CF109, but consecutive to the sentence imposed in case number 2018CF183.

The circuit court determined that Kohlhoff was entitled to 943 days of sentence credit, as reflected on the judgment of conviction entered in case number 2018CF183.

In his response to the no-merit report, Kohlhoff expresses concern that the circuit court may have awarded him more sentence credit than he was entitled to receive. Kohlhoff was arrested and taken into custody on July 7, 2018, in connection with the charges in case number 2018CF114. He was released on bond 61 days later, on September 6, 2019. Kohlhoff was taken back into custody on September 13, 2018, where he remained until he was sentenced 882 days later in all four cases, on February 11, 2021. The circuit court combined the two periods of presentence incarceration, 61 days and 882 days, into a single sentence credit award of 943 days. Based on our review of the record, we are satisfied that the circuit court did not make any error to Kohlhoff's detriment when making its sentence credit determination; therefore, Kohlhoff does not have any arguably meritorious argument to pursue additional credit on appeal. To the extent Kohlhoff suggests that he received more sentence credit than that to which he was entitled, this does not serve as a basis for rejecting the no-merit report.

With regard to the circuit court's exercise of its sentencing discretion, the record reveals that the circuit court's discretionary 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). The standards for the circuit court and this court on discretionary sentencing issues are well established and need not be repeated here. *See id.*, ¶¶17-51. In this case, the circuit court considered appropriate factors, did not consider improper factors, and reached a reasonable result within the statutory penalty ranges for each count. We agree with counsel that any challenge to the circuit court's exercise of sentencing discretion would be without arguable merit.

The no-merit report also discusses whether there would be any arguable merit to a claim that the circuit court improperly inserted itself into plea negotiations. The record reflects that, at a final pretrial hearing held on February 5, 2021, Kohlhoff informed the court that he was interested in considering a global plea agreement. The court explained that it is not involved in plea negotiations, and the court recessed so that the parties could have a private conversation about a global plea offer outside of the court's presence. When the court resumed the hearing, defense counsel informed the court that the State had made a global plea offer, but that Kohlhoff did not want to accept the offer. Kohlhoff told the court that he needed to explain himself, but before he went into detail about the terms of the offer, the court stated, "Sir, there is no explaining that takes place in this process. The offer is either accepted or it's rejected. That's all." When Kohlhoff again attempted to discuss the offer, the court stopped him and said, "It's a plea offer that is not appropriate for me to get involved with discussing." The parties returned to court on February 11, 2021, and informed the court that they had reached a global plea agreement. The court went on to engage in a colloquy with Kohlhoff and accept his pleas, as discussed above. Having reviewed the record, this court agrees with counsel's conclusion in the no-merit report that there would be no arguable merit to a claim that the circuit court improperly inserted itself into or otherwise interfered with plea negotiations.

Finally, the no-merit report discusses whether there would be arguable merit to a claim of ineffective assistance of counsel. To establish ineffective assistance of counsel, Kohlhoff would have to show that counsel's performance fell below an objective standard of reasonableness and that he was prejudiced as a result. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). In reviewing trial counsel's performance, "every effort is made to avoid determinations of

ineffectiveness based on hindsight.... and the burden is placed on the defendant to overcome a strong presumption that counsel acted reasonably within professional norms.” *State v. Johnson*, 153 Wis. 2d 121, 127, 449 N.W.2d 845 (1990). This court’s review of the record, no-merit report, response, and supplemental report discloses no basis for challenging trial counsel’s performance. We agree with counsel’s conclusion in the no-merit report that any claim of ineffective assistance of counsel would be without arguable merit.

This court’s independent review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Christina Starner is relieved of any further representation of Dylan Jon Kohlhoff in these matters. *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