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DISTRICT I

August 1, 2023

To:

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Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
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Thomas J. Erickson
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Arnell T. Brown Jr. 631187
Jackson Correctional Inst.
P.O. Box 233
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You are hereby notified that the Court has entered the following opinion and order:

2021AP1871-CRNM State of Wisconsin v. Arnell T. Brown, Jr. (L.C. # 2020CF2820)

Before White, C.J., Donald, P.J., and Dugan, 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).

Arnell T. Brown, Jr. appeals from his judgment of conviction entered after he pled guilty to hiding a corpse. He also appeals the order denying his postconviction motion seeking to vacate the restitution ordered by the trial court. His appellate counsel, Attorney Thomas J. Erickson, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).¹ Brown was advised of his right to file a response, but he did not do so. Upon this court's independent review of the record as mandated by *Anders*, and

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

counsel's report, we conclude there are no issues of arguable merit that could be pursued on appeal. We, therefore, summarily affirm.

According to the criminal complaint, officers from the Milwaukee Police Department were called in July 2020 to investigate a dead body concealed in a recycling bin on Vliet Street. The victim was identified as Kayvon Washington. During the investigation, detectives interviewed a friend of Washington's who said he had driven Washington to an area near 28th Street and Vliet to buy marijuana from someone called "Munchie," who the friend identified as Brown. Additionally, Washington's grandmother provided detectives with a phone that Washington had been using, which was logged into Facebook Messenger and contained a discussion about setting up a meeting to buy marijuana. The Facebook profile of the other person involved in that discussion appeared to be Brown.

Detectives interviewed Brown's former girlfriend. She said that Brown had told her that Washington had come to his home on 28th Street to smoke, had grabbed Brown's gun, and ran from the house. Brown told her that he had caught Washington on the porch and knocked the gun away from him. When officers interviewed Brown, he told them that after he knocked the gun away, Washington had run back into Brown's house and shut the door. Brown admitted that he then shot through the door, killing Washington. Brown said he panicked and put Washington's body in the recycling bin.

Brown was charged with hiding a corpse, and opted to resolve the matter with a plea. The trial court accepted the plea, and immediately moved to sentencing.

During the sentencing portion of the hearing, the State sought restitution for Washington's funeral expenses. Brown objected, arguing that he was acting in self-defense after

Washington had tried to steal his gun, and further, that the crime of hiding a corpse for which Brown was convicted was not the direct cause of Washington's funeral expenses.

The trial court disagreed, and ordered restitution in the amount of \$10,463.00. It then sentenced Brown to four years of initial confinement, followed by four years of extended supervision.

Brown filed a postconviction motion seeking to vacate the restitution award, arguing that it was not recoverable under Wisconsin's restitution law. The trial court observed that Brown's claim that he was acting in self-defense was a legal conclusion that had "never been established in a court of law." The court further stated that the State's decision not to pursue a homicide charge against Brown "did not sever a causal nexus between the crime considered at sentencing (i.e. hiding a corpse) and the funeral expenses." The court, therefore, denied Brown's postconviction motion. This no-merit appeal follows.

In the no-merit report, appellate counsel addresses two issues: whether there would be arguable merit to appealing the validity of Brown's plea; and whether there would be arguable merit to a claim that the trial court erroneously exercised its discretion in sentencing Brown, including the order for restitution. We agree with appellate counsel's analysis that there would be no arguable merit to an appeal of either of these issues.

With regard to Brown's pleas, the plea colloquy by the trial court complied with the requirements set forth in WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Additionally, the trial court confirmed that Brown signed and understood the plea questionnaire and waiver of rights form, which further demonstrates that

Brown’s plea was knowingly, voluntarily, and intelligently entered. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827, 416 N.W.2d 627 (Ct. App. 1987).

With regard to sentencing, the record reflects that the trial court considered relevant sentencing objectives and factors. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Furthermore, the eight-year sentence imposed by the trial court is within the twelve-and-one-half-year maximum authorized by law, *see* WIS. STAT. §§ 940.11(2), 939.50(3)(f) (2019-20), and, therefore, there would be no arguable merit to a claim that Brown’s sentence is unduly harsh or unconscionable. *See State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449.

With regard to the restitution ordered by the trial court pursuant to WIS. STAT. § 973.20 (2019-20), Brown argued, both at the sentencing hearing as well as in his postconviction motion, that the statute’s requirements are not applicable here. Specifically, Brown asserted that the statute’s mandate that restitution shall be made “to any victim of a crime considered at sentencing,” *see* § 973.20(1r), is not applicable here because the crime for which he was convicted—hiding a corpse—does not include the requisite “causal nexus” with the victim’s losses—the funeral expenses for Washington—as Brown maintains that he was acting in self-defense, and it was Washington’s own actions that led to his death. *See State v. Canady*, 2000 WI App 87, ¶9, 234 Wis. 2d 261, 610 N.W.2d 147.

The law of restitution does require that the victim establish a causal nexus between the defendant’s actions and the victim’s damages; that is, the victim “must show that the defendant’s criminal activity was a ‘substantial factor’” in causing the victim’s damages. *Id.* (citation

omitted). The defendant’s actions constitute a substantial factor if they are the “precipitating cause of the injury,” and the resulting harm was “the natural consequence[s] of the actions.” *Id.* (citations omitted; brackets in *Canady*).

However, the restitution statute is to be considered “broadly and liberally in order to allow victims to recover their losses as a result of a defendant’s criminal conduct.” *Id.*, ¶8 (citations omitted). Therefore, the statutory term “crime considered at sentencing” of WIS. STAT. § 973.20(1r) has been determined to “encompass[] ‘all facts and reasonable inferences concerning the defendant’s activity *related to* the crime for which the defendant was convicted, not just those facts *necessary* to support the elements of the specific charge of which the defendant was convicted.’” *State v. Queever*, 2016 WI App 87, ¶21, 372 Wis. 2d 388, 887 N.W.2d 912 (citations and some internal quotation marks omitted).

Here, the trial court addressed this issue during sentencing by noting that while there were no homicide charges leveled against Brown, there is “a world of difference” between the State’s decision to not bring any such charges—likely due to issues relating to proof—and Brown’s claim that he was acting in self-defense. The court further observed that any lack of evidence relating to Washington’s death was due to “choices [Brown] made” in hiding Washington’s body, rather than contacting the police after the shooting. This point was reiterated in the court’s denial of Brown’s postconviction motion, with the court stating that there was “no question that [Brown] shot [Washington],” thus finding that “the facts and reasonable inferences support the conclusion that [Brown] was a substantial factor in [Washington’s] death.” We agree with appellate counsel’s assessment that there would be no arguable merit to a claim that the trial court erroneously exercised its discretion in ordering restitution and rejecting Brown’s motion to vacate that order. *See id.*, ¶12.

Our independent review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Brown further in this appeal.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Thomas J. Erickson is relieved of further representation of Brown 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