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DISTRICT II

August 23, 2023

To:

Hon. Larisa V. Benitez-Morgan
Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Colleen Marion
Electronic Notice

Netrell Bosley, #701987
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2022AP1189-CRNM State of Wisconsin v. Netrell Bosley (L.C. #2020CF390)

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).

Netrell Bosley appeals a judgment of conviction for one count of attempted first-degree intentional homicide and one count of strangulation and suffocation. Appointed appellate counsel 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). Bosley was advised of his right to file a response but has not done so. Upon consideration of the report and an independent review of the record as mandated

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

by *Anders* and RULE 809.32, we summarily affirm the judgment because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Bosley was charged with multiple offenses in connection with a home invasion involving two victims, M.B. and D.Y.-S. M.B. reported that she awoke to a man, later identified as Bosley, at the foot of her bed with a knife. Bosley got on top of her, cut her, and grabbed her by the throat for approximately twenty seconds, slightly obstructing her breathing. D.Y.-S. entered the room after hearing M.B. screaming and sought to intervene. Bosley stabbed D.Y.-S. repeatedly, including in the center of the chest, and stated “I’m going to kill you.” As Bosley and D.Y.-S. struggled, Bosley also stated, “I’m about to kill you.” Bosley then ran out of the house, stating that he would return with a gun and kill D.Y.-S.

Pursuant to a plea agreement, Bosley pled guilty to one count of attempted first-degree intentional homicide and one count of strangulation and suffocation. Seven remaining charges were dismissed and read in for sentencing purposes. The circuit court sentenced Bosley to seventeen years of initial confinement and ten years of extended supervision on the attempted homicide count and to three years of initial confinement and two years of extended supervision on the strangulation and suffocation count, with the sentences to run consecutive to one another.

The no-merit report first addresses whether Bosley’s guilty pleas could be withdrawn because they were not knowing, intelligent, and voluntary. We agree with counsel that there is no arguable merit to this issue. With one potential exception that we discuss in the next paragraph, the circuit court’s plea colloquy with Bosley, including the court’s references to the plea questionnaire and waiver of rights form, complied with the requirements of WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.

The potential exception relates to the circuit court's duty to ascertain whether there is a factual basis for a defendant's guilty plea. Here, the court did not make an express finding that there was a factual basis for Bosley's pleas. However, we agree with counsel that, under the circumstances here, there is no arguable merit to pursuing plea withdrawal based on any alleged lack of a factual basis. During the plea hearing, the court referenced its knowledge of the circumstances of Bosley's case based on the criminal complaint, and Bosley indicated on the plea questionnaire form that he understood that the court could accept his pleas based on the complaint. The complaint allegations support a factual basis for Bosley's pleas, as do other portions of the record. See *State v. Thomas*, 2000 WI 13, ¶23, 232 Wis. 2d 714, 605 N.W.2d 836 ("On a motion to withdraw, a court may look at the totality of the circumstances to determine whether a defendant has accepted the factual basis presented underlying the guilty plea.").

The no-merit report next addresses whether the circuit court erroneously exercised its sentencing discretion. We agree with counsel that there is no arguable merit to this issue. The court considered the required sentencing factors along with other relevant factors. See *State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. The court did not consider any improper factors. Bosley's sentences were within the allowed maximum and could not be challenged as unduly harsh or so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We see no other non-frivolous basis on which Bosley might challenge his sentences.

Based upon our independent review of the record, we have found no other arguable basis to pursue further appellate proceedings. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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 Colleen Marion is relieved from further representing Netrell Bosley in this appeal. *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