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DISTRICT IV

August 24, 2023

To:

Hon. Brian A. Pfitzinger
Circuit Court Judge
Electronic Notice

Ellen J. Krahn
Electronic Notice

Kelly Enright
Clerk of Circuit Court
Dodge County Justice Facility
Electronic Notice

Jin Ho D. Pack
Electronic Notice

Joseph N. Ehmann
Electronic Notice

Marc E. Lamore
Dodge County Jail
216 W. Center St.
Juneau, WI 53039

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

2022AP1544-CRNM State of Wisconsin v. Marc E. Lamore (L.C. # 2021CM282)

Before Nashold, J.¹

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 Ellen Krahn, appointed counsel for Marc Lamore, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Lamore was sent a copy of the report and has not filed a response. Upon consideration of the report and an independent review of the record, I conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, I affirm.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Lamore was initially charged with three offenses: criminal damage to property, criminal trespass, and disorderly conduct, all as acts of domestic abuse. As set forth in the complaint, the charges arose out of a course of conduct by Lamore at the victim's residence. A police officer was dispatched to the scene, initially for a report that an intoxicated individual was attempting to break down a door. By the time the officer arrived, Lamore had broken into the residence. He was intoxicated and acting belligerent. As the officer questioned him, Lamore continued yelling at the victim and attempted to push past her. The officer placed Lamore in handcuffs to deescalate the situation and to protect the victim and others in the residence.

In an amended complaint, the State dropped the charge for criminal damage to property and added a second charge for disorderly conduct as an act of domestic abuse. Pursuant to a plea agreement, Lamore pled no contest to both disorderly conduct charges, and the charge for criminal trespass was dismissed and read in for sentencing purposes. The parties stipulated that the circuit court could rely on the complaint allegations as the factual basis for Lamore's no-contest pleas, and the court found that the complaint allegations provided a sufficient factual basis. The court imposed consecutive sentences of ninety days in jail on each charge, but stayed the jail sentences and placed Lamore on probation for one year.

The no-merit report first addresses whether Lamore's no-contest pleas were knowing, intelligent, and voluntary. I agree with counsel that there is no arguable merit to this issue. The circuit court's plea colloquy with Lamore, 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, relating to the nature of the charges, the constitutional rights that Lamore was waiving, and other matters. I see no other nonfrivolous basis upon which Lamore might seek plea withdrawal.

Although not addressed in the no-merit report, I have considered whether Lamore could seek plea withdrawal by arguing that the complaint allegations did not provide a sufficient factual basis to support two separate charges of disorderly conduct as an act of domestic abuse. *See Brown*, 293 Wis. 2d 594, ¶35 (circuit court’s plea colloquy duties include ascertaining whether a factual basis exists to support the plea). I have concluded that there is no arguable merit to this issue because the allegations in the complaint show a course of conduct sufficient to support two separate charges. One charge could be based on the initial report of Lamore attempting to break down a door to the victim’s residence that resulted in the officer being dispatched to the scene, and a second charge could be based on Lamore’s subsequent belligerent conduct inside the residence that prompted the officer to handcuff Lamore to de-escalate the situation.

The no-merit report next addresses whether Lamore could challenge the circuit court’s exercise of its sentencing discretion. I agree with counsel that there is no arguable merit to this issue. Although the court’s sentencing remarks were brief, they reflect that the court’s consideration of the required sentencing factors and relevant circumstances was sufficient to show a reasonable exercise of discretion. *See State v. Gallion*, 2004 WI 42, ¶¶40-43, 270 Wis. 2d 535, 678 N.W.2d 197. The court did not consider any improper factors. I see no other arguable basis on which Lamore might challenge the court’s sentencing decision.

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

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Ellen Krahn is relieved of any further representation of Marc Lamore 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