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DISTRICT I

November 14, 2023

To:

Hon. Jeffrey A. Wagner
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Carl W. Chesshir
Electronic Notice

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Devante Marquis Randall 596584
Dodge Correctional Inst.
P.O. Box 700
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You are hereby notified that the Court has entered the following opinion and order:

2021AP200-CRNM	State of Wisconsin v. Devonte Marquis Randall (L.C. #2019CF2262)
2021AP201-CRNM	State of Wisconsin v. Devonte Marquis Randall (L.C. #2019CF1803)

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

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).

Devante Marquis Randall appeals from judgments of conviction entered upon his guilty pleas. Appellate counsel, Carl W. Chesshir, has filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).[1] Randall was advised of his right to file a response, but he has not responded. Counsel also filed a supplemental report

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

pursuant to an order of this court. We have independently reviewed the record and the reports as required by ***Anders***, and we conclude that there are no issues of arguable merit that could be pursued on appeal. We, therefore, summarily affirm the judgments.

BACKGROUND

In December 2018, Randall was at the home of his then-girlfriend V.R. Randall wanted to move in with her, but she refused. They got into an argument. Randall also got into a physical fight with V.R.'s sixteen-year-old son. When Randall left, he threw a brick through a window of V.R.'s home. In January 2019, a criminal complaint in Milwaukee County Circuit Court case No. 2019CF91 was issued, charging Randall with child abuse by intentionally causing bodily harm, criminal damage to property as an act of domestic abuse, and disorderly conduct as an act of domestic abuse.[2] An arrest warrant for Randall was issued.

By April 2019, Randall was in a relationship with T.R. He lived in an apartment with her, her father J.R., and her two children, A.W. and K.R. On April 22, 2019, T.R. went to work at 11 a.m., leaving six-month-old A.W. and two-and-one-half-year-old K.R. in Randall's care. Shortly before 6 p.m., Randall began texting T.R., who did not see the messages because she was working. Around 6:30 p.m., Randall ran into T.R.'s workplace, telling her something was wrong with A.W. T.R. ran out to the car, where A.W. was lifeless and not breathing. They drove to the hospital. T.R. asked Randall what happened, and he told her that he had been visiting family and they heard gunshots, so he tried to run away while holding both children, but he fell.

[2] Those charges were later dismissed and read in at sentencing as part of a plea agreement, so that case was not directly appealable.

At the hospital, T.R. took A.W. inside and expected Randall to park and bring K.R. in, but Randall did not do so. Instead, he called J.R. so that they could meet and Randall could transfer K.R. to J.R.'s care. When they met, J.R. observed K.R. to have significant bruising and other injuries to his face. Randall told J.R. that the children were injured while he was visiting family, but could not identify any relative's name or address.

The criminal complaint extensively details A.W.'s injuries, but in summation:

> [t]he most common cause of AW's constellation of injuries is a massive acceleration/deceleration event with a rotational component, with or without impact. This type of force can be seen when a child is violently shaken, slammed, and/or thrown. The skull fracture and facial bruising confirm impact(s) to AW's head. The bruising to the right forehead overlays the fracture to the skull. In this case, AW's injuries are so severe he will not likely survive.

After being removed from life support, A.W. died on April 25, 2019.

The criminal complaint also documents the various injuries to K.R., including days-old "healing bilateral tibia fractures and multiple bruises, some of which are patterned and in protected areas. The bruising is extensive, located over multiple planes of the body, and not consistent with a fall as a cause. Overall, K.R.'s injuries are diagnostic for child physical abuse."

The criminal complaint was filed on April 26, 2019, charging Randall with first-degree reckless homicide and child neglect resulting in death for A.W.'s injuries, and child abuse by intentionally causing bodily harm and child neglect resulting in bodily harm for K.R.'s injuries.[3]

[3] To be clear, however, the charges against K.R. were only based on the bruises and abrasions he had sustained after his mother left him with Randall that morning, not the healing fractures.

Another arrest warrant for Randall was issued. Randall was arrested and taken into custody on both warrants on or about April 28, 2019.

About a month later, on May 21, 2019, an individual approached police about the July 2012 homicide of Javon Whiteside. Whiteside had been shot during a drug transaction; just before he died at the scene, Whiteside was able to tell police that "Tay-Tay" had shot him. A phone number on Whiteside's phone was eventually linked to Randall, who had gone to middle school with Whiteside. Randall had been interviewed in 2012 and acknowledged that one of his nicknames was Tay, but he denied involvement, and no charges were issued at the time. However, the individual who contacted police on May 21, 2019, provided additional details about Randall's involvement. With that additional information, and after re-examining the evidence in the case, the State charged Randall with one count of first-degree reckless homicide.

Randall agreed to resolve his cases through a plea bargain. Pursuant to the terms of the agreement, Randall would plead guilty to the charges involving A.W., K.R., and Whiteside. In exchange, the charges involving A.W. were modified downward to second-degree reckless homicide and child neglect resulting in bodily harm; the charge for Whiteside's death was amended to second-degree reckless homicide with use of a dangerous weapon; and the charges stemming from the December 2018 incident would be dismissed and read in at sentencing. The circuit court accepted the pleas and later sentenced Randall to consecutive terms of imprisonment totaling sixty years: forty-four years of initial confinement and sixteen years of extended supervision. Randall appeals.

DISCUSSION

The no-merit report first discusses whether the circuit court "properly accepted Randall's guilty plea[s]." A defendant's guilty plea must be knowingly, intelligently, and voluntarily entered. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). To that end, "Wisconsin imposes certain statutory and common law duties on circuit courts" to ensure that a defendant's plea is validly given. *See* ***State v. Pegeese***, 2019 WI 60, ¶21, 387 Wis. 2d 119, 928 N.W.2d 590; *see also* ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.

One of the circuit court's duties is to "[i]nform the defendant of the constitutional rights he waives by entering a plea and verify that the defendant understands he is giving up these rights[.]" *See* ***Brown***, 293 Wis. 2d 594, ¶35. The circuit court's colloquy with Randall about his constitutional rights was as follows:

> THE COURT: You have gone over these guilty plea questionnaires and waiver of rights forms with your lawyer?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Do you understand them completely?
>
> THE DEFENDANT: Yes, sir.
>
> ….
>
> THE COURT: And, counsel, you're satisfied the defendant's intelligently, voluntarily and knowingly waiving those constitutional rights?
>
> [COUNSEL]: Yes.

Based on this conversation, the no-merit report states that the circuit court "engaged in a colloquy with Randall about his guilty pleas and his waiver of rights to ascertain his understanding of his constitutional rights" and further states that a review of the record "reveals

that the trial court could properly rely upon the waiver of rights forms in accepting Randall's guilty pleas."

The plea questionnaire and waiver form do indeed specify the constitutional rights Randall was giving up with his plea. However, while using a plea questionnaire and waiver of rights form lessens the extent and degree of the colloquy required between the circuit court and the defendant, "it was not intended to eliminate the need for the court to make a record demonstrating the defendant's understanding that the plea results in the waiver of the applicable constitutional rights." *See* ***State v. Hansen***, 168 Wis. 2d 749, 755-56, 485 N.W.2d 74 (Ct. App. 1992); *cf.* ***Pegeese***, 387 Wis. 2d 119, ¶37 (holding a plea colloquy was not defective in light of waiver form and court asking defendant specifically if he understood "the [c]onstitutional [r]ights you give up when you enter a plea today" and he had "[a]ny questions about those rights"), ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987) (holding there was no error in relying on the waiver form because circuit court asked defendant personally whether "his attorney had assisted him in understanding the rights being waived and if he understood each of the paragraphs he had initialed"). We, therefore, directed appellate counsel to file a supplemental report explaining why Randall could not pursue an arguably meritorious plea motion for plea withdrawal.

In the supplemental report, counsel explains that he spoke with Randall about potentially withdrawing his guilty pleas. After taking some time to consider his options, Randall ultimately told appellate counsel that he did not want to pursue plea withdrawal because of the potential consequences of doing so. Specifically, a successful plea withdrawal means that any agreements made pursuant to the plea bargain may be rescinded and the parties returned to their original

positions, *see* ***State v. Deilke***, 2004 WI 104, ¶26, 274 Wis. 2d 595, 682 N.W.2d 945, but Randall's agreement with the State had reduced his overall prison exposure by ninety-six years.

The circuit court's plea colloquy, while cursory, otherwise satisfied the duties for taking a guilty plea, as required by WIS. STAT. § 971.08, ***Bangert***, and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Because Randall does not wish to pursue the only potential avenue for plea withdrawal, there is no arguable basis for challenging his pleas as anything other than knowing, intelligent, and voluntary. *See* ***State ex rel. Ford v. Holm***, 2006 WI App 176, ¶8, 296 Wis. 2d 119, 722 N.W.2d 609; *see also* ***State ex rel. Flores v. State***, 183 Wis. 2d 587, 607, 516 N.W.2d 362 (1994) (recognizing that defendants may not always wish to pursue a postconviction motion, for any number of "personal, practical, or even idiosyncratic reasons").

The no-merit report also addresses "whether the circuit court erroneously exercised its discretion in sentencing Randall." *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a 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, ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and determine which objective or objectives are of greatest importance, *see* ***Gallion***, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court should consider primary factors including the gravity of the offense, the character of the offender, and the protection of the public, and may consider several additional factors. *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* ***Ziegler***, 289 Wis. 2d 594, ¶23.

Our review of the record confirms that the court appropriately considered relevant sentencing objectives and factors. The sixty-year sentence imposed is within the sixty-five year range 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). There is no arguable merit to a challenge to the court's sentencing discretion.

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

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Carl W. Chesshir is relieved of further representation of Randall 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