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DISTRICT III

November 28, 2023

To:

Hon. Vincent R. Biskupic
Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
Electronic Notice

Osuntoka L. Smith 594482
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

Peter Anderson
Electronic Notice

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

2022AP808-CRNM State of Wisconsin v. Osuntoka L. Smith
(L. C. No. 2020CF522)

Before Stark, P.J., Hruz and Gill, 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).

Counsel for Osuntoka Smith has filed a no-merit report concluding that no grounds exist to challenge Smith's conviction for battery by a prisoner, contrary to WIS. STAT. § 940.20(1) (2021-22).¹ Smith was informed of his right to file a response to the no-merit report, and he has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could

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

be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The State charged Smith with battery by a prisoner and disorderly conduct, both counts as a repeater. The charges arose from allegations that Smith entered another inmate's cell without permission, and when that inmate attempted to stop Smith from stealing his property, Smith attacked the inmate and slammed his head on the cell floor. Another inmate blocked the cell door to prevent other inmates, who were gathering to view the commotion, from entering the cell. At the time of the attack, Smith had a prior conviction for battery by a prisoner that remained on his record and had not been reversed.

In exchange for Smith's no-contest plea to battery by a prisoner without the repeater enhancer, the State agreed to recommend that the circuit court dismiss and read in the remaining count. The State also agreed that it would join in defense counsel's sentencing recommendation of fourteen months of initial confinement followed by fourteen months of extended supervision. The court imposed a sentence consistent with the joint recommendation.

The no-merit report addresses whether Smith knowingly, intelligently, and voluntarily entered his no-contest plea; whether the circuit court properly exercised its sentencing discretion; and whether there are any grounds to challenge the effectiveness of Smith's trial counsel. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that there is no arguable merit to any of these issues. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further.

In addition to the issues discussed by counsel, we note that Smith, through his counsel, submitted a letter to the circuit court requesting to appear at the plea hearing via

videoconference.² Smith explained that he wanted to avoid quarantine when arriving at the Outagamie County Jail and when returning to the institution. Although the court did not ask Smith to waive his in-person appearance at the hearing, Smith cannot pursue alleged errors that he himself helped create. *See State v. Hungerford*, 54 Wis. 2d 744, 749, 196 N.W.2d 647 (1972) (“[T]he defendant cannot now be heard to complain about a situation he himself brought about.”). Any challenge to Smith’s appearance by videoconference would therefore lack arguable merit. Additionally, with some exceptions not relevant here, Smith’s valid no-contest plea waived all nonjurisdictional defects and defenses. *See State v. Kelty*, 2006 WI 101, ¶¶18 & n.11, 34, 294 Wis. 2d 62, 716 N.W.2d 886.

Our independent review of the record discloses no other potential issue for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Peter Anderson is relieved of his obligation to further represent Osuntoka Smith in this matter. *See* WIS. STAT. RULE 809.32(3).

² After entering his no-contest plea, Smith agreed to immediately proceed to sentencing.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals