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DISTRICT I

January 9, 2024

To:

Hon. Frederick C. Rosa
Circuit Court Judge
Electronic Notice

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

David Malkus
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Eric Devin Smith Jr. 2023016407
Milwaukee County Jail
949 N. 9th St.
Milwaukee, WI 53233

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

2022AP438-CRNM	State of Wisconsin v. Eric Devin Smith, Jr. (L.C. # 2019CF5596)
2022AP439-CRNM	State of Wisconsin v. Eric Devin Smith, Jr. (L.C. # 2019CF5095)

Before Donald, P.J., Geenen and Colón, 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).

Eric Devin Smith, Jr., appeals from judgments, entered on his guilty pleas, convicting him on one count of stalking resulting in bodily harm as a domestic abuse incident and as a habitual criminal; one count of second-degree recklessly endangering safety as a domestic abuse incident; and one count of criminal damage to property of less than \$2,500. Appellate counsel, David Malkus, 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 Smith was advised of his right to file a response, but has not responded. Upon this court's independent review of the record, as mandated by *Anders*, and counsel's report, we conclude that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgments.

In November 2019, in Milwaukee County Circuit Court case No. 2019CF5095, Smith was charged with stalking, first-degree recklessly endangering safety, criminal damage to property, and two counts of disorderly conduct, all as domestic abuse incidents, and an additional charge of criminal damage to property. Smith allegedly was "irate" because his former live-in girlfriend, M.B., told him that she no longer wanted to be in a relationship with him. Smith was reportedly making threats, kicking M.B.'s door as if to kick it in, intentionally rear-ending and ramming her vehicle, and breaking windows at the group home where M.B. was employed.

In December 2019, in Milwaukee County Circuit Court case No. 2019CF5596, Smith was charged with stalking resulting in bodily harm and false imprisonment, both as domestic abuse incidents and both as a habitual criminal. Smith had allegedly been waiting for M.B. outside her apartment and, when she exited, had her get into his car. Smith began driving and arguing with M.B. before striking her in the mouth, splitting her lip. M.B. tried to get out of the moving vehicle, but Smith held her arm, pulled her toward him, and bit her ear. When Smith pulled into a gas station, M.B. tried to get out of the vehicle, but Smith also got out and began striking her and trying to get her back into the car. Smith fled on foot when police arrived.

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

Arrest warrants were issued in both cases; Smith was returned on the warrants in January 2020. The cases were not formally joined but tracked together and were eventually resolved with a plea bargain. In exchange for Smith’s guilty pleas to an amended charge of second-degree recklessly endangering safety as a domestic abuse incident and criminal damage to property in case No. 2019CF5095, plus stalking resulting in bodily harm as a domestic abuse incident and as a habitual offender in case No. 2019CF5596, the State would dismiss and read in the remaining charges and limit its sentencing recommendation to “prison.”² The circuit court accepted Smith’s pleas and later sentenced Smith to a total of six years of imprisonment.³ Smith appeals.

The first potential issue discussed in the no-merit report is whether the circuit court erred when accepting Smith’s pleas. Our review of the record—including the plea questionnaire and waiver of rights forms and addenda, included jury instructions, and plea hearing transcript—confirms that the circuit court complied with its obligations for accepting guilty pleas pursuant to WIS. STAT. § 971.08, *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. We are satisfied that the no-merit report properly analyzes this issue as lacking arguable merit. We also agree that there is no arguable merit to claims that Smith’s pleas were anything other than knowing, intelligent, and voluntary or that the circuit court erred in accepting Smith’s pleas.

² Approximately three weeks after Smith’s initial appearance in both cases, the State dismissed the stalking charge in case No. 2019CF5095 on multiplicity grounds, explaining that the charge had been “essentially subsumed” by the stalking charge in case No. 2019CF5596.

³ In case No. 2019CF5095, the circuit court imposed twelve months in the House of Correction for the endangering safety charge and a concurrent sentence of six months for the criminal damage charge. Because of available sentence credit, and because these sentences were made consecutive to the five-year sentence in case No. 2019CF5596, these sentences amounted to a time-served disposition.

The other potential issue discussed in the no-merit report is whether the circuit court erroneously exercised its discretion in sentencing Smith. 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, *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the court should consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, and may consider other factors. *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. *Id.*

Our review of the record confirms that the circuit court appropriately considered relevant sentencing objectives and factors. The six-year total sentence imposed is well within the potential twenty-nine-year and three-month maximum 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). We are satisfied that the no-merit report properly analyzes this issue as lacking arguable merit, and we agree that 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.⁴

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 David Malkus is relieved of further representation of Smith 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

⁴ Smith filed a postconviction motion seeking additional sentence credit. The circuit court granted that motion and entered an amended judgment of conviction reflecting the additional credit in case No. 2019CF5596.