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DISTRICT I

February 6, 2024

To:

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Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
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Electronic Notice

Paul C. Dedinsky
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You are hereby notified that the Court has entered the following opinion and order:

2023AP490-CRNM	State of Wisconsin v. Jermaine P. Potts (L.C. # 2018CF358)
2023AP491-CRNM	State of Wisconsin v. Jermaine P. Potts (L.C. # 2018CF3344)

Before White, C.J., Donald, P.J., and Colón, 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).

Jermaine P. Potts appeals his judgments of conviction entered after he pled guilty to physical abuse of a child by recklessly causing great bodily harm; disorderly conduct with a domestic abuse assessment; and misdemeanor bail jumping. He also appeals the order denying his postconviction motion.¹ His appellate counsel, Dustin C. Haskell, filed a no-merit report

¹ Potts's pleas were taken and his sentences imposed by the Honorable Cynthia M. Davis. Potts's postconviction motion and evidentiary hearing were before the Honorable Michelle A. Havas. We refer to them both as the circuit court.

pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).² Potts was advised of his right to file a response, but he did not do so. Upon this court’s independent review of the record as mandated by *Anders*, and counsel’s report, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm.

The charges against Potts stem from injuries sustained by his son, Z.L., which were reported to police by Children’s Hospital in January 2018. Z.L., who was five months old at the time, was admitted to the hospital with a number of injuries, including a hematoma on the right side of his brain. The report by Z.L.’s doctor stated that such an injury was generally caused when a child is “violently slammed, shaken, and/or thrown,” and would not be expected from a “minor household trauma” such as a fall from a bed or couch.

Z.L.’s mother, S.L., told police that Potts had been watching Z.L. when he became unresponsive and was taken to the hospital. S.L. said that Potts has a “bad temper,” and that he sometimes became “aggressive” when Z.L. was fussy and would shake Z.L. Potts told police in a custodial interview that he did not know how Z.L.’s injuries had occurred, but that he realized the injuries occurred while Z.L. was in his care, so he would “take responsibility for what happened.” Potts also said it was “possible” that he had been “too aggressive” with Z.L. while he was crying.

Potts was released from custody on bail, with a no-contact order in place. However, Potts was arrested again after an incident in July 2018, reported to police by S.L. S.L. said that while

² All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

she was driving, she saw Potts in the vehicle next to her, signaling for her to pull over. S.L. stated that Potts used his vehicle to try to run her off the road; he also pulled his car directly in front of hers at one point and then slammed on the brakes. Potts was charged with felony bail jumping and disorderly conduct with domestic abuse assessments.

Potts chose to resolve both cases with a plea. Pursuant to the plea agreement, the bail jumping charge was reduced to a misdemeanor, and Potts pled guilty to the three charges in both cases. The circuit court imposed sentences consisting of six years of initial confinement followed by three years of extended supervision for the child abuse charge; a consecutive nine-month sentence for the bail jumping charge; and a ninety-day sentence for the disorderly conduct charge consecutive to the child abuse sentence but concurrent to the bail jumping sentence.

Potts filed a postconviction motion in February 2022, seeking plea withdrawal. Potts's motion centered on a report by a neurologist retained by Potts, who opined that Z.L.'s injuries were unlikely to have been the result of abuse. Potts argued that his trial counsel was ineffective for failing to obtain Z.L.'s medical records and consult with an expert to determine whether there was an alternative explanation for Z.L.'s injuries, and that granting plea withdrawal would correct a manifest injustice.

A *Machner*³ hearing was held in November 2022, during which Potts and his trial counsel testified. Trial counsel testified that she had obtained Z.L.'s medical records through discovery, but did not consult with a child abuse expert. She said that she discussed potential defenses with Potts, but that his admissions during his custodial interview were "problematic."

³ See *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

Trial counsel stated that Potts had indicated that he wanted her to try to negotiate a plea with the State. She noted that this became more difficult when Potts was charged in the second case, especially due to the circumstances surrounding those charges.

In contrast, Potts testified that he did not remember any discussions with his trial counsel about negotiating a plea agreement. Rather, he stated that he had told her that he wanted to proceed with a trial “no matter what.” Potts said that the reason he ultimately pled guilty was because trial counsel told him he would get probation.

The circuit court found trial counsel’s testimony to be credible, and Potts’s testimony to be incredible, with regard to their plea discussions. The court further noted that Potts’s expert had encountered credibility issues in other courts, so even if he had been retained for a trial, his report would not have been “easily accepted” by the State. Therefore, the court denied Potts’s postconviction motion. This no-merit appeal follows.

In the no-merit report, appellate counsel addresses two issues: whether there would be arguable merit to appealing the validity of Potts’s pleas, including an appeal of the order denying his postconviction motion seeking plea withdrawal; and whether there would be arguable merit to a claim that the circuit court erroneously exercised its discretion in sentencing Potts. We agree with appellate counsel’s analysis that there would be no arguable merit to an appeal of either of these issues.

First, the no-merit report addresses whether Potts’s pleas were knowingly, voluntarily, and intelligently entered. *See State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. The plea colloquy by the circuit court complied with the requirements set forth in WIS. STAT. § 971.08 and *Brown*, 293 Wis. 2d 594, ¶35. The court also confirmed that Potts signed

and understood the plea questionnaires and waiver of rights forms, which further demonstrates that Potts’s pleas were knowingly, voluntarily, and intelligently entered. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827, 416 N.W.2d 627 (Ct. App. 1987). There would be no arguable merit to a challenge to the pleas’ validity.

The no-merit report also discusses the denial of Potts’s postconviction motion seeking plea withdrawal based on a claim of ineffective assistance of trial counsel. The no-merit report takes note of the circuit court’s credibility findings at the *Machner* hearing—that trial counsel’s testimony was credible and Potts’s testimony was incredible—which, upon review, this court must accept as they are supported by the record. *See State v. Jenkins*, 2007 WI 96, ¶¶33, 303 Wis. 2d 157, 736 N.W.2d 24. The no-merit report further states that based on those credibility findings, Potts’s ineffective assistance claim fails because he did not demonstrate that there was a reasonable probability that, without the alleged errors by trial counsel, he would not have pled guilty and would have instead insisted on going to trial. *See Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Therefore, the no-merit report concludes that there is no arguable merit to a challenge of the circuit court’s exercise of its discretion in denying plea withdrawal. *See Hatcher v. State*, 83 Wis. 2d 559, 564-565, 266 N.W.2d 320 (1978). We agree with that assessment.

Finally, the no-merit report addresses Potts’s sentences. The circuit court acts within its discretion when it considers relevant sentencing objectives and factors, including the protection of the community, punishment and rehabilitation of the defendant, and deterrence to others. *State v. Gallion*, 2004 WI 42, ¶¶17, 40, 270 Wis. 2d 535, 678 N.W.2d 197; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The record here reflects that the circuit court did consider the relevant objectives and factors. In particular, the court noted the “devastating” consequences Potts’s crimes had on Z.L. in terms of his injuries, as well as the

impact on S.L. Additionally, the sentences imposed are within the statutory maximums, and therefore are not presumptively unduly harsh or unconscionable. *See State v. Grindemann*, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507. There would be no arguable merit to a challenge of Potts's sentences.

Our independent review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the convictions and the order, and discharges appellate counsel of the obligation to represent Potts further in this appeal.

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved of further representation of Jermaine P. Potts 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