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DISTRICT II

March 20, 2024

To:

Hon. Robert P. Dewane
Circuit Court Judge
Electronic Notice

Chris Koenig
Clerk of Circuit Court
Sheboygan County Courthouse
Electronic Notice

Joseph N. Ehmann
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Thomas R. Thiel
2826 Erie Ave.
Sheboygan, WI 53081

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

2022AP2154-CRNM State of Wisconsin v. Thomas R. Thiel (L.C. #2020CF368)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Thomas R. Thiel appeals a judgment of conviction entered upon his no-contest pleas to four felonies. His appellate counsel filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).¹ Thiel received a copy of the report, was advised of his right to file a response, and has not responded. Upon consideration of the

¹ Assistant State Public Defender Suzanne L. Hagopian filed the no-merit report on Thiel's behalf. A second attorney from her office, Assistant State Public Defender and Regional Attorney Manager Joseph N. Ehmann, subsequently entered a notice of appearance as substitute counsel in this matter. See WIS. STAT. RULE 809.85(4)(c). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there are no arguably meritorious issues for appeal. *See* WIS. STAT. RULE 809.21.

The State alleged in a criminal complaint that on May 22, 2020, Hampton² went to Thiel’s home in Sheboygan County to collect \$500 that Thiel owed for some construction work. Thiel and Hampton chatted briefly in Thiel’s driveway, and Hampton mentioned that his daughter, Sybil,³ worked as an assistant corporation counsel. Thiel became enraged, seized a box cutter, and held it to Hampton’s throat with the blade extended. Thiel then said that Sybil “cost [Thiel] \$4,500” in connection with a child support dispute. Thiel next pulled Hampton into Thiel’s garage, grabbed a baseball bat, and threatened to kill both Hampton and Sybil. Thiel’s daughter entered the garage from the house during the confrontation. Thiel directed her to close the garage overhead door but she was unable to do so. Thiel then demanded that Hampton return the \$500 that he had just received from Thiel. Hampton handed the money back to Thiel and left the premises. A few days later, Hampton received a telephone call from Thiel, who stated that he was on the way to Hampton’s house and asked why Hampton had not been home the previous day. Hampton responded that he had a gun, which apparently dissuaded Thiel from continuing to pursue contact with Hampton.

The complaint went on to allege that during the summer of 2019, Sybil was working as an assistant corporation counsel, and in that capacity she met with Thiel at the courthouse in

² Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use a pseudonym instead of the victim’s name.

³ We again use a pseudonym. *See id.*

regard to his child support case. As the meeting progressed, Thiel became verbally aggressive and confrontational. Sybil activated a duress alarm and reported to the responding sergeant that Thiel had used expletives, made demands, and then held his fist to her face.

Based on the foregoing facts, the State charged Thiel with kidnapping, false imprisonment, second-degree recklessly endangering safety, armed robbery, threatening bodily harm to corporation counsel, and threatening bodily harm to the family of corporation counsel, all by use of a dangerous weapon; and with felony intimidation of a victim and stalking. Thiel disputed the eight charges for some time but in due course he decided to resolve the case with a plea agreement that involved charge concessions but no sentencing concessions. Pursuant to the agreement, he pled no contest to false imprisonment, second-degree recklessly endangering safety, threatening bodily harm to corporation counsel; and threatening bodily harm to the family of corporation counsel. The State, in exchange, moved to dismiss the penalty enhancers and to dismiss and read in the remaining four charges.

The case proceeded to sentencing. For second-degree recklessly endangering safety, a Class G felony, Thiel faced a maximum penalty of a \$25,000 fine and ten years of imprisonment. *See* WIS. STAT. §§ 941.30(2), 939.50(3)(g) (2019-20). The circuit court imposed an evenly bifurcated four-year term of imprisonment. For each of the remaining charges, all Class H felonies, Thiel faced a maximum penalty of a \$10,000 fine and six years of imprisonment. *See* WIS. STAT. §§ 940.30, 940.203(3), 939.50(3)(h) (2019-20). The circuit court imposed a consecutive, evenly bifurcated four-year term of imprisonment for threatening bodily harm to the family of corporation counsel, and the circuit court imposed consecutive, evenly bifurcated two-year terms for threatening bodily harm to corporation counsel and for false imprisonment. The circuit court stayed the sentences in favor of a six-year term of probation on all counts. The

circuit court also imposed and stayed six months in jail as a condition of Thiel's probation on the charge of false imprisonment. No restitution was requested or imposed.

We first consider whether Thiel could pursue an arguably meritorious claim for plea withdrawal on the ground that his no-contest pleas were not entered knowingly, intelligently, and voluntarily. See *State v. Bangert*, 131 Wis.2d 246, 257, 389 N.W.2d 12 (1986). We are satisfied that appellate counsel properly analyzed this issue and correctly concluded that Thiel could not raise such a claim.

At the outset of the plea hearing, the circuit court established that Thiel was forty-nine years old and had a high school diploma. The circuit court further established that Thiel had signed a plea questionnaire and waiver of rights form after reviewing it with his trial counsel and that he understood the contents of the form. See *State v. Hoppe*, 2009 WI 41, ¶32, 317 Wis. 2d 161, 765 N.W.2d 794 (providing that a completed plea questionnaire and waiver of rights form helps to ensure a knowing, intelligent, and voluntary plea). The circuit court went on to conduct an exemplary colloquy with Thiel that fully complied with the circuit court's obligations when accepting a plea other than not guilty. See WIS. STAT. § 971.08; see also *Hoppe*, 317 Wis. 2d 161, ¶18. The record—including the plea questionnaire and waiver of rights form; the jury instructions that Thiel initialed describing the elements of the crimes to which he pled no contest; and the transcript of the plea hearing—demonstrates that Thiel entered his no-contest pleas knowingly, intelligently, and voluntarily. Further pursuit of this issue would be frivolous within the meaning of *Anders*.

We next conclude that no arguably meritorious basis exists for pursuit of issues arising prior to Thiel's no-contest pleas. A defendant who enters a valid no-contest plea normally

forfeits all nonjurisdictional defects and defenses to the criminal charge. *State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886. This broad rule encompasses the issues that Thiel raised in the circuit court, including his claim that the complaint failed to state probable cause, see *State v. Higgs*, 230 Wis. 2d 1, 8-9, 601 N.W.2d 653 (Ct. App. 1999), and his demand for a speedy trial, see *Foster v. State*, 70 Wis. 2d 12, 19-20, 233 N.W.2d 411 (1975). Further pursuit of the issues that Thiel raised prior to his no-contest pleas would thus be frivolous within the meaning of *Anders*.

We also agree with appellate counsel that Thiel could not pursue an arguably meritorious challenge to the circuit court's exercise of sentencing discretion. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court indicated that rehabilitation and deterrence were the primary sentencing goals, and the circuit court discussed the factors that it viewed as relevant to achieving those goals. See *id.*, ¶¶41-43. The circuit court's discussion included the mandatory sentencing factors of "the gravity of the offense[s], the character of the defendant, and the need to protect the public." See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. As required, the circuit court considered probation as the first alternative, see *Gallion*, 270 Wis. 2d 535, ¶25, and the circuit court determined that six years of probation was the proper disposition, rejecting the State's contention that probation would unduly depreciate the gravity of the offenses.⁴ The disposition selected was far less than the maximum aggregate sentence allowed by law and cannot be considered unduly harsh or

⁴ In the no-merit report, appellate counsel correctly observes that, while the circuit court ordered Thiel to serve his stayed sentences consecutively, the circuit court properly did not order consecutive terms of probation. See *State v. Pierce*, 117 Wis. 2d 83, 85, 342 N.W.2d 776 (Ct. App. 1983); see also *State v. Schwebke*, 2001 WI App 99, ¶29, 242 Wis. 2d 585, 627 N.W.2d 213 ("[P]robation cannot be made consecutive to probation."). Accordingly, while the circuit court ordered Thiel to serve six years of probation on each count, the circuit court imposed an aggregate six-year term of probation.

unconscionable. *See State v. Mursal*, 2013 WI App 125, ¶26, 351 Wis. 2d 180, 839 N.W.2d 173. A challenge to the circuit court's exercise of sentencing discretion would therefore lack arguable merit.

Finally, the circuit court granted Thiel 150 days of sentence credit. The record shows that the award properly reflected credit for each calendar day that Thiel spent in custody from May 26, 2020, when he was arrested, through October 22, 2020, when he was released from jail after posting bond. *See State v. Kontny*, 2020 WI App 30, ¶10, 392 Wis. 2d 311, 943 N.W.2d 923. At the close of the sentencing hearing, Thiel suggested that he was entitled to additional credit for his time in home detention with electronic monitoring as a condition of his bond. The circuit court advised that it would consider a motion for additional credit if supported by legal authority. Thiel did not file a motion for additional sentence credit, and we conclude that a motion for sentence credit based on his time in home detention would lack arguable merit. A defendant is not in custody following release on bond with conditions that include home detention. *State v. Magnuson*, 2000 WI 19, ¶48, 233 Wis. 2d 40, 606 N.W.2d 536. Therefore, a defendant is not entitled to sentence credit for such periods of home detention. *Id.*

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Joseph N. Ehmann is relieved from further representing Thomas R. Thiel in this appeal. *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