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DISTRICT I

March 26, 2024

To:

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Circuit Court Judge
Electronic Notice

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

Kathleen A. Lindgren
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1467-CRNM State of Wisconsin v. Charles D. Willis (L.C. # 2021CF1571)

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

Charles D. Willis appeals his judgment of conviction entered after he pled guilty to second-degree recklessly endangering safety and second-degree reckless homicide, both as a party to a crime. He also appeals from the order denying his postconviction motion for sentence modification.[1] His appellate counsel, Kathleen A. Lindgren, filed a no-merit report pursuant to

[1] The Honorable J.D. Watts accepted Willis's pleas and sentenced him. The Honorable Ellen R. Brostrom heard Willis's postconviction motion. We refer to them both as the circuit court.

Anders v. California, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).[2] Willis 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.

In January 2020, officers from the Milwaukee Police Department responded to an incident at a small grocery store located at 42nd Street and North Avenue. J.D.W. told the officers that he had driven to the store to use the ATM. He had left his car running when he went inside. While inside the store, he looked out the window and saw two unknown Black men sitting in his vehicle, and ran outside to confront them. The men tried to drive away in J.D.W.'s vehicle, but they put the car in drive instead of reverse, and got stuck on a cement parking barrier.

The men exited J.D.W.'s vehicle and ran across the street. One of the men pulled a firearm and fired at J.D.W. multiple times. J.D.W. was not injured, but his car sustained damage. The men then got into a waiting vehicle and sped away. Officers found four bullet casings at the scene.

A short time later, a 911 operator received a call from a security officer at St. Joseph's Hospital about a gunshot victim who had been dropped off. The victim, identified as Kenneth Yearby, had been helped to the door of the hospital by two individuals, who then immediately left the hospital. Yearby had been shot in the chest, with the bullet exiting his back. He died as a result of that gunshot wound.

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

The police suspected these incidents were related. During their investigation, they interviewed Lamont Rodgers.[3] Rodgers admitted to being in a vehicle with Yearby on the night of the shooting, and stated that Willis was driving. Rodgers said Yearby told Willis to stop the car when they saw J.D.W.'s vehicle parked and running at the grocery store. Rodgers stated that he and Yearby got into J.D.W.'s vehicle to steal it, but exited the vehicle when they saw J.D.W. come out of the store.

As they were running back to the car where Willis was waiting, Rodgers said Willis told him to shoot J.D.W. Rodgers stated that both he and Willis started shooting at J.D.W. Rodgers then heard Yearby say that he had been shot, by either Rodgers or Willis, as they were shooting at J.D.W. Rodgers said he assisted Yearby into the waiting vehicle and they drove to St. Joseph's Hospital, where they dropped him off.

J.D.W. identified Yearby and Rodgers in a photo array as the men who tried to steal his car. Additionally, the police analyzed the four bullet casings found at the scene, comparing them with two firearms that were found in the home where Rodgers and Willis were arrested; two of the casings were from one of the guns, and the other two casings were from the other gun.

Willis was charged with second-degree recklessly endangering safety and second-degree reckless homicide, both as a party to a crime. He chose to pursue a plea agreement to resolve the matter, entering pleas of no contest to both charges. The circuit court imposed a global sentence of seven years of initial confinement to be followed by five years of extended supervision, as

[3] Rodgers was charged in other unrelated armed robberies that occurred a few days before this shooting. As a condition of a plea agreement entered into by Rodgers in those cases, he agreed to cooperate with the State in the prosecution of Willis for his involvement in Yearby's shooting. Willis was also separately charged and convicted of committing one of those armed robberies with Rodgers.

recommended by the State. The court also entered an order on Willis's stipulation to restitution in the amount of $16,000, with joint and several liability with Rodgers.

Willis subsequently filed a postconviction motion seeking sentence modification. He argued that Rodgers received a lesser sentence for the same offenses—five years of initial confinement followed by five years of extended supervision—by a different judge, and sought modification of his alleged disparate sentence.

The circuit court rejected his claim. It focused on Rodgers' cooperation in the prosecution of Willis, noting that without that cooperation, the State likely would not have had sufficient evidence to charge Willis in this shooting. The court opined that this cooperation was likely considered at Rodgers' sentencing. Furthermore, the court concluded that Willis had neither established a new factor nor shown that his sentence was unduly harsh and unconscionable, as required for sentence modification. It therefore denied Willis's 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 Willis's pleas; and whether there would be arguable merit to a claim that the circuit court erroneously exercised its discretion in sentencing Willis. We agree with appellate counsel's analysis that there would be no arguable merit to an appeal of either of these issues.

A plea must be knowingly, voluntarily, and intelligently entered. ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. With regard to Willis's pleas, 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 Willis signed and understood the plea

questionnaire and waiver of rights form, which further demonstrates that Willis'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). Therefore, there would be no arguable merit to challenging the validity of Willis's pleas.

With regard to sentencing, the record reflects that the circuit court properly exercised its discretion in considering relevant sentencing objectives and factors. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The primary sentencing factors that must be considered by the court are the gravity of the offense, the character of the offender, and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Other relevant factors may also be considered. ***Id.***

Here, the circuit court observed that Willis had also been convicted in a separate case for an armed robbery that had occurred just a few days before this shooting, noting these "serious crimes" happened "very close in time." The court further stated that Willis had not been charged for attempting to steal J.D.W.'s vehicle, but it was "clear" that is what had transpired that night. The court also commented on the danger caused by Willis and Rodgers shooting at J.D.W. for simply trying to keep his vehicle from being stolen, which resulted in Yearby being killed. It referred to these as "aggravating factors," and stated there was a "very high need" to protect the public. Additionally, in discussing Willis's character, the court observed his previous contacts with the juvenile justice system, noting that its rehabilitation programs "[o]bviously … didn't work[.]" These are all proper and relevant factors for consideration at sentencing. *See* ***id.***

Furthermore, Willis's sentences were within the statutory maximums, and are therefore presumed not to be unduly harsh or unconscionable. *See* ***State v. Grindemann***, 2002 WI App

106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507. For these reasons, there would be no arguable merit to a challenge of Willis's sentences.

Additionally, there would be no arguable merit to an appeal of the denial of Willis's postconviction motion for sentence modification. A court may only modify a sentence if there is a new factor warranting modification, or upon finding that the original sentence was "unduly harsh and conscionable." ***Id.***, ¶21 (citation omitted). As just stated, Willis's sentences are presumed not to be unduly harsh and unconscionable. *See* ***id.***, ¶32. To establish the existence of a new factor, there must be "a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing[.]" ***State v. Harbor***, 2011 WI 28, ¶48, 333 Wis. 2d 53, 797 N.W.2d 828.

In his postconviction motion, Willis failed to demonstrate that the disparity between his and Rodgers' sentences was a "new factor." *See* ***id.*** During Willis's sentencing hearing, the circuit court noted that it was aware of the State's sentencing recommendation for Rodgers in his armed robbery case, but at that time Rodgers had not yet been sentenced in his case. The court observed that it did not "know what will happen" with Rodgers's sentence, and that it "was in no way bound" by any recommendation in Rodgers's case in fashioning Willis's sentence. In fact, the court emphasized that sentences are "individualized … to each defendant." Indeed, as stated above, the record reflects that Willis's sentences were based on proper factors. Therefore, the disparity between Willis's and Rodgers's sentences was not highly relevant to imposition of Willis's sentences, and thus is not a new factor. *See* ***id.*** As a result, we conclude there would be no arguable merit to a challenge of the postconviction court's denial of Willis's motion for sentence modification.

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

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Kathleen A. Lindgren is relieved from further representing Charles D. Willis 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