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DISTRICT I

July 9, 2024

To:

Hon. David A. Feiss
Reserve Judge

Jennifer L. Vandermeuse
Electronic Notice

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

Terrance Markee Rowe 533135
Supervised Living Facility
P.O. Box 10
Winnebago, WI 54985

Katie Babe
Electronic Notice

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

2022AP1828-CRNM State of Wisconsin v. Terrance Markee Rowe (L.C. # 2020CF3877)

Before White, C.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).

Terrance Markee Rowe appeals from a judgment, entered upon his guilty pleas, convicting him of second-degree recklessly endangering safety and possession of a firearm by a felon. He also appeals from an order denying his postconviction motion for resentencing. Appellate counsel, Katie Babe, 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 Rowe was advised of his right to file a response, but he has not responded. Upon this court's independent review of the record, as

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

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 judgment and order.

On September 27, 2020, D.R.G. was shot in the leg by someone named "Day-Day" after the two got into an argument during a dice game outside a grocery store on North 27th Street. After he was shot, D.R.G. tried to get to the store. Police spoke with D.R.G. later at the hospital, then with the store owner, from whom they obtained surveillance videos covering at least seven different interior and exterior angles.

On the videos, police observed that as D.R.G. limped towards the store, two store employees grabbed guns and ran outside. One of the employees fired off two shots in the direction of the original shooting. Based on surveillance video, the store owner's social media, and a booking photo, police determined that the employee who had fired shots was Rowe.

A month later, police were looking for Rowe and went to a particular address. No one answered the door. An officer covering the rear of the building observed Rowe trying to exit through a second-story window. Rowe went back inside when he spotted the officer, then exited another window. The officer followed him. Rowe jumped over a railing, but there was an eight-foot drop; Rowe injured his leg and was apprehended.

Rowe was charged with three offenses: second-degree recklessly endangering safety,² possession of a firearm by a felon, and obstructing an officer, each with various enhancers. Rowe eventually agreed to resolve his case with guilty pleas to the first two offenses, without the

² As written, the criminal complaint is somewhat confusing; it therefore bears emphasizing that Rowe was not alleged to have shot D.R.G., nor was he so charged. He was charged for the two random shots he fired down the street.

enhancers. The obstruction charge, also unenhanced, would be dismissed and read-in. The circuit court accepted Rowe's pleas and imposed concurrent sentences of two years' initial confinement and two years' extended supervision, to be served consecutively to a revocation sentence Rowe was then serving.

Rowe filed a postconviction motion for resentencing, claiming that he received ineffective assistance from trial counsel and that he was sentenced on inaccurate information. After briefing, the circuit court denied the motion without a hearing. Rowe appeals.

The first potential issue discussed in the no-merit report is whether Rowe might be allowed to withdraw his pleas as not knowing, intelligent, and voluntary. Our review of the record—including the plea questionnaire and waiver of rights form, jury instructions, and plea hearing transcript—confirms that the circuit court complied with its obligations for taking 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. There is no arguable merit to a claim that the circuit court failed to properly conduct a plea colloquy or that Rowe's pleas were anything other than knowing, intelligent, and voluntary.

The second potential issue discussed in the no-merit report is whether the circuit court erroneously exercised its sentencing discretion. 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, see *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 court appropriately considered relevant sentencing objectives and factors. The concurrent sentences totaling four years’ imprisonment are well within the twenty-year maximum range authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and they are 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). There is no arguable merit to a challenge to the court’s sentencing discretion.

The third potential issue discussed in the no-merit report is whether the circuit court properly denied Rowe’s postconviction motion without a hearing. Rowe sought resentencing on two grounds: first, that he had received ineffective assistance of counsel when counsel argued for more initial confinement than Rowe thought they had agreed to and when counsel failed to introduce defense of others as a mitigating circumstance at sentencing, and second, when the circuit court sentenced him based on inaccurate information about the location of the dice game.

“A hearing on a postconviction motion is required only when the movant states sufficient material facts that, if true, would entitle the defendant to relief.” *State v. Allen*, 2004 WI 106, ¶14, 274 Wis. 2d 568, 682 N.W.2d 433. The circuit court has the discretion to deny “even a properly pled motion ... without holding an evidentiary hearing if the record conclusively demonstrates that the defendant is not entitled to relief.” *State v. Sulla*, 2016 WI 46, ¶30, 369 Wis. 2d 225, 880 N.W.2d 659.

To demonstrate ineffective assistance of counsel, “the defendant must prove (1) that trial counsel’s performance was deficient; and (2) that this deficiency prejudiced the defendant.” *State v. Dillard*, 2014 WI 123, ¶85, 358 Wis. 2d 543, 859 N.W.2d 44. The movant must prevail on both prongs to secure relief. *Allen*, 274 Wis. 2d 568, ¶26. Here, the circuit court denied relief on the ineffective assistance claim because it concluded that Rowe had failed to sufficiently demonstrate prejudice. The circuit court explained that it had imposed the minimum amount of confinement time it believed was necessary to achieve its sentencing objectives, so “[i]f counsel had argued for less time, it would not have changed the outcome, and therefore, the defendant was not prejudice[d].” The circuit court also explained that “[t]he primary facts underlying [Rowe’s] defense of others claim ... were already presented at sentencing” and, to the extent that Rowe was attempting to raise a legal argument, he had waived any legal claim with his plea. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (valid guilty plea waives all nonjurisdictional defects and defenses).

A defendant who seeks resentencing based on the circuit court’s use of inaccurate information must show that the information was inaccurate and that the circuit court actually relied on the inaccuracy in the sentencing. *State v. Tiepelman*, 2006 WI 66, ¶26, 291 Wis. 2d 179, 717 N.W.2d 1. Rowe claimed the circuit court relied on inaccurate information about the dice game because the State had said the game was inside the store, which implied that Rowe knew about the “illegal gambling and potential for violence that was brewing.” While the State misspoke, defense counsel clarified that the game was not in the store. The circuit court ultimately denied relief on the inaccurate information claim because “the exact location of the dice game was inconsequential to the court’s sentencing analysis” and “did not factor in to the court’s sentencing decision in any respect.”

Because Rowe failed to adequately establish prejudice and because the record demonstrates that the circuit court did not rely on the location of the dice game, the circuit court was not required to hold a hearing on Rowe's postconviction motion. Thus, there is no arguable merit to a claim that the circuit court erroneously denied the motion without a hearing.

The final issue discussed in the no-merit report is whether the circuit court properly denied postconviction counsel's motion to withdraw so that Rowe could proceed *pro se* on appeal. Rowe failed to respond to the circuit court's order, which was intended to initiate a colloquy necessary to establish that Rowe was knowingly, intelligently, and voluntarily waiving the right to counsel. See *State v. Egerson*, 2018 WI App 49, ¶11, 383 Wis. 2d 718, 916 N.W.2d 833; *State v. Thornton*, 2002 WI App 294, ¶22, 259 Wis. 2d 157, 656 N.W.2d 45. Because Rowe failed to respond, the record does not support a valid waiver of the right to appellate counsel. We therefore agree with appellate counsel and conclude that there is no arguable merit to challenging the denial of counsel's motion to withdraw.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Katie Babe is relieved of further representation of Rowe 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