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DISTRICT III

January 3, 2019

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

2017AP1759-CRNM State of Wisconsin v. Kyle A. Schaefer (L. C. No. 2014CF385)

Before Stark, P.J., Hruz and Seidl, 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).

Counsel for Kyle Schaefer has filed a no-merit report concluding there is no basis to challenge an order of commitment. Schaefer was advised of his right to respond and has not responded. Upon our independent review of the record as mandated by *Anders v. California*,

386 U.S. 738 (1967), we conclude there is no merit to any issue that could be raised on appeal and summarily affirm. *See* WIS. STAT. RULE 809.21 (2015-16).¹

According to the criminal complaint, police responded to a residence in the Town of Maine, where it was reported that two people had been shot and the shooter was still on the scene. It was subsequently determined that Schaefer had been in the basement of the residence, and, without warning or provocation, he came up the basement stairs and shot P.S. and S.S. in their home. Schaefer was living at the residence with his mother, who is S.S.'s sister. At the time of the shooting, P.S. and S.S. were playing cards with C.P. and D.S. following dinner. After the shooting, Schaefer turned around and went back into the basement. Schaefer did not say anything during the incident. When police arrived, Schaefer was found seated on a swing outside near a walkout area of the basement, smoking a cigarette. An officer asked where the shooter was, and Schaefer responded "it was me." The officer asked who the shooter was, and Schaefer again stated "me." Schaefer was then arrested without incident.

Schaefer was charged with one count of attempted first-degree intentional homicide and three counts of first-degree endangering safety. All four counts involved use of a dangerous weapon, and counts one and two were charged as incidents of domestic abuse. Competency evaluations were conducted by Drs. Michael Galli, Robert Owens, and Elliot Lee. The circuit court found that Schaefer was not competent to stand trial and committed him for treatment to restore him to competency.

¹ References to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Schaefer was transferred to Mendota Mental Health Institute, and, during the course of treatment, he was diagnosed with schizophrenia. After taking an antipsychotic medication, Schaefer improved to the point that evaluators at Mendota concluded he was competent to proceed to trial. Schaefer and the circuit court accepted that conclusion.

Schaefer then entered pleas of not guilty by reason of mental disease or defect, and the circuit court ordered an examination under WIS. STAT. § 971.16. The initial examination by Dr. Brooke Lundbohm concluded Schaefer suffered from schizophrenia at the time he committed the offenses, and, as a result, he lacked the substantial capacity to appreciate the wrongfulness of his behavior and the capacity to conform his conduct to the requirements of the law. The court ordered a second examination by an evaluator retained by the State, Dr. Craig Schoenecker, who also concluded Schaefer was schizophrenic at the time he committed the offenses and that he was not mentally responsible.

Schaefer subsequently pleaded no contest to two of the charges: attempted first-degree intentional homicide of P.S., and first-degree recklessly endangering safety of S.S., both with the dangerous weapon enhancer and as incidents of domestic abuse. The remaining two charges of first-degree recklessly endangering safety were dismissed and read in. The parties stipulated that Schaefer lacked mental responsibility for his conduct based on the reports of Lundbohm and Schoenecker, and they waived the right to trial on Schaefer's mental responsibility. The circuit court accepted the stipulation and found Schaefer not guilty by reason of mental disease or defect.

Regarding the issue of commitment under WIS. STAT. § 971.17, the parties waived a dispositional report under § 971.17(2) and agreed that institutional placement was appropriate,

and that an involuntary treatment order should be entered. The circuit court accepted those stipulations. The parties disagreed about the length of the commitment, with the State arguing for the maximum allowable fifty-seven-and-one-half years and Schaefer's counsel asking for fifteen to twenty years. The court ordered Schaefer committed for forty-five years.

The no-merit report addresses potential issues regarding whether Schaefer's pleas were knowingly and voluntarily entered; and whether the commitment order and its term were based upon the circuit court's proper exercise of discretion or otherwise based on improper factors. This court is satisfied that the no-merit report properly analyzes the issues raised, and we will not further discuss them. Our independent review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Jefren E. Olsen is relieved of further representing Kyle Schaefer in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals