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DISTRICT I

August 29, 2019

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

2018AP831-CRNM	State of Wisconsin v. Brock Faine (L.C. # 2016CF4868)
2018AP903-CRNM	State of Wisconsin v. Brock Faine (L.C. # 2016CF3702)

Before Brash, P.J., Kessler and Dugan, 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).

In these consolidated matters, Brock Faine appeals the judgments convicting him of theft from a person, attempted armed robbery with use of force, and robbery with use of force, all as a party to a crime. *See* WIS. STAT. §§ 943.20(1)(a), 943.32(1)(a) & (2), 939.32, 939.05 (2015-16).¹

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Appellate counsel, Thomas J. Erickson, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and *Anders v. California*, 386 U.S. 738 (1967). Faine was advised of his right to file a response and has elected not to do so. Upon consideration of the report and an independent review of the records, we conclude that the judgments may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Background

Case No. 2016CF3702

According to the complaint, in August 2016, three men approached a woman who had her cell phone in her hand. Two of the men stood at her side while one grabbed her cell phone. Then the three men ran to a silver vehicle parked on the street.

A citizen witness got the license plate information for the vehicle, which was located by police officers within thirty minutes of the victim's report. The police stopped the vehicle and found four men inside, one of whom was Faine. The victim subsequently identified two of the men for their involvement in the theft.

Faine was charged with theft from a person as a party to a crime.

Case No. 2016CF4868

Less than three months after the complaint in Case No. 2016CF3702 was filed, Faine was charged with five additional crimes in this case: attempted armed robbery with use of force as a party to a crime; second-degree recklessly endangering safety as a party to a crime; two counts of robbery with use of force as a party to a crime; and obstructing an officer. The charges stemmed

from a crime spree that Faine and a co-defendant went on in October 2016. At the time, Faine was released on a signature bond in Case No. 2016CF3702.

Following negotiations, Faine pled guilty to the theft charge in Case No. 2016CF3702 and to the attempted armed robbery and one of the robbery charges in Case No. 2016CF4868. For its part, the State agreed to dismiss and read in the remaining charges against Faine and to recommend that he serve a global sentence of nine years of initial confinement and nine years of extended supervision.

On the three charges to which he pled, the circuit court ordered Faine to serve concurrent sentences resulting in eight years of initial confinement and nine years of extended supervision with eligibility for the Challenge Incarceration Program and the Substance Abuse Program after seven years of initial confinement. The circuit court subsequently commuted the extended supervision portion of Faine's sentence for attempted armed robbery in Case No. 2016CF4868 from the nine years initially imposed to the maximum allowed by statute, which resulted in a total of seven years and six months of extended supervision.² The circuit court additionally ordered Faine and his co-defendant jointly and severally responsible for restitution in the amount of approximately \$1450.

In his no-merit report, appellate counsel considers whether there would be any arguable merit to an appeal on three issues: (1) the validity of Faine's pleas; (2) the circuit court's

² In Case No. 2016CF4868, Faine was sentenced as follows: count one, attempted armed robbery as a party to a crime, eight years of initial confinement and seven years and six months of extended supervision; and count three, robbery with use of force as a party to a crime, six years of initial confinement and five years of extended supervision, to run concurrently. In Case No. 2016CF3702, theft from a person as a party to a crime, Faine was sentenced to five years of initial confinement and five years of extended supervision, also to run concurrently.

exercise of sentencing discretion; and (3) the restitution order. This court is satisfied that the no-merit report properly analyzes the issues it raises as being without merit. We discuss these issues further only to briefly address the dismissed and read-in charges and the restitution order.

Discussion

During the plea colloquy the circuit court did not specifically mention the dismissal and read-in aspect of three of the charges against Faine in Case No. 2016CF4868. While our supreme court has emphasized that circuit courts should provide certain warnings regarding read-in offenses, *see State v. Straszkowski*, 2008 WI 65, ¶¶5, 97, 310 Wis. 2d 259, 750 N.W.2d 835, those warnings have not been made a mandatory part of a plea colloquy, *see State v. Sulla*, 2016 WI 46, ¶35, 369 Wis. 2d 225, 880 N.W.2d 659 (stating counsel and courts “should” provide advisements regarding read-in charges). When he recited the plea negotiations, trial counsel mentioned that the remaining charges in Case No. 2016CF4868 would be dismissed and read in, and Faine stated that he understood the negotiations. Additionally, the effects of read-in charges were explained on the plea questionnaire forms, which Faine said he reviewed with trial counsel and signed. We conclude that there would be no arguable merit to challenging the validity of Faine’s guilty pleas on this or any other basis.

As to restitution, at the combined plea and sentencing hearing, one of Faine’s victims testified. The victim of the attempted armed robbery charge testified to the cost of items that were stolen from his car, damage to his car, medical expenses, and lost wages. The record supports the circuit court’s exercise of discretion in ordering Faine jointly and severally

responsible for restitution.³ *See* WIS. STAT. § 973.20(13)(c); *State v. Madlock*, 230 Wis. 2d 324, 329, 602 N.W.2d 104 (Ct. App. 1999) (a request for restitution is addressed to the circuit court's discretion). A challenge to the restitution order would lack arguable merit.

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

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Thomas J. Erickson is relieved from further representing Brock Faine in these appeals. *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

³ The circuit court provided trial counsel with an opportunity to argue about the amount of restitution the victim sought. Trial counsel did not do so.