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July 23, 2024

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Dustin C. Haskell
Electronic Notice

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

2023AP1777-CRNM State of Wisconsin v. Stephfon Lamar Jackson
(L.C. # 2019CF3077)

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).

Stephfon Lamar Jackson appeals a judgment convicting him of physical abuse of a child and child neglect. Appellate counsel, Dustin C. Haskell, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).¹ Jackson was advised of his right to file a response, but has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders*, we conclude that

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

there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm. *See* WIS. STAT. RULE 809.21.

The State charged Jackson with one count of physical abuse of a child (repeated acts causing great bodily harm), one count of child neglect resulting in bodily harm, and one count of witness intimidation. The charges stemmed from allegations that Jackson physically abused his girlfriend's daughter, S.L.H., in various ways, including placing S.L.H.'s hands in scalding hot water.

Jackson ultimately pled guilty to physical abuse of a child by recklessly causing great bodily harm, and neglect of a child under six where harm did not occur. The witness intimidation charge was dismissed and read in. The circuit court conducted a colloquy with Jackson and accepted his pleas. The court sentenced Jackson to three years of initial confinement and three years of extended supervision for the physical abuse charge, and one year of initial confinement and one year of extended supervision for the child neglect charge, to run concurrently. This no-merit report follows.

Appellate counsel's no-merit report addresses four issues: (1) whether there is an arguably meritorious basis to challenge two pre-plea issues; (2) whether the circuit court properly accepted Jackson's guilty pleas; (3) whether the circuit court erroneously refused to recuse itself prior to sentencing; and (4) whether the circuit court properly exercised its sentencing discretion. We address each issue.

Before Jackson entered his pleas, the case was set for trial. Four days prior to the date trial was scheduled, and after multiple delays, defense counsel requested an adjournment. Counsel stated that she was having difficulty communicating with Jackson, who was out of

custody, due to ongoing physical health issues he was confronting—his mouth was wired shut and he was in a leg brace. Counsel explained that the previous night had been her first opportunity to fully review the discovery with Jackson, though she had been appointed nine months earlier. The circuit court denied the adjournment request, noting the age of the case and the victim’s request for a prompt resolution. The day the trial was scheduled to begin, counsel again requested an adjournment and the court again denied the request, but set the case over until the next day to resolve other matters.

The following day, defense counsel requested a competency evaluation, stating she had reason to doubt Jackson’s ability to understand the charges. The circuit court denied the request, stating that Jackson was previously able to advocate for himself at prior bail hearings and that given the timing of the request, counsel was simply attempting a “last ditch effort” to obtain an adjournment. The court then gave the parties additional time to discuss plea negotiations. Jackson ultimately pled guilty.

There is no arguable merit to a claim that the circuit court erroneously denied the adjournment request or that the court erroneously denied defense counsel’s request for a competency evaluation. As to the adjournment request, a decision whether to grant or deny an adjournment is left to the court’s discretion and will not be reversed on appeal absent an erroneous exercise of discretion. *State v. Leighton*, 2000 WI App 156, ¶27, 237 Wis. 2d 709, 616 N.W.2d 126. Here, the court’s decision was based on the age of the case, its concern for the victim, and its own calendar. We are satisfied that any argument that the court erroneously exercised its discretion in denying an adjournment would be without merit.

As to the circuit court’s decision to deny defense counsel’s request for a competency evaluation, we note that “before competency proceedings are required, evidence giving rise to a reason to doubt competency must be presented to the circuit court.” *State v. Smith*, 2016 WI 23, ¶43, 367 Wis. 2d 483, 878 N.W.2d 135. “[W]hether there is evidence that does give rise to a reason to doubt a defendant’s competency is a question left to the sound discretion of the circuit court.” *Id.* The court denied counsel’s request for a competency evaluation based on its observation that Jackson had not demonstrated a lack of competency throughout the proceedings, counsel had not provided evidence to the contrary, and its finding that the request was a delay tactic. We are satisfied that any argument that the court erroneously exercised its discretion in denying a competency evaluation would be without merit.

With regard to Jackson’s guilty pleas, our review of the record—including the plea questionnaire/waiver of rights form, the addendum, the jury instructions, and the 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 906.² These obligations exist specifically to help ensure the validity of any plea. We thus agree with appellate counsel’s conclusion in the no-merit report that there is no arguable merit to seeking

² Although the plea questionnaire/waiver of rights form incorrectly listed the maximum penalty, the circuit court advised Jackson of the correct maximum penalty and sentenced him within the correct range. We also note that defense counsel submitted the incorrect jury instruction for child neglect. Defense counsel submitted WIS JI—CRIMINAL 2150A, child neglect resulting in some degree of harm. However, the correct jury instruction was WIS JI—CRIMINAL 2150, neglect of a child under six resulting in no harm. The circuit court correctly advised Jackson of the correct elements, however, and Jackson stated that he understood. There would be no arguable merit to challenging the validity of Jackson’s pleas based on the incorrect jury instruction.

plea withdrawal based on a claim that Jackson's pleas were anything other than knowing, intelligent, and voluntary.

Appellate counsel next contends that there is no arguably meritorious basis to challenge the circuit court's decision to not recuse itself prior to sentencing. Before sentencing, defense counsel moved to have the court to recuse, to change venue out of Milwaukee County, and to withdraw as counsel. Appellate counsel correctly states that counsel's motion did not identify the basis for seeking this relief. The record reflects that the motion was based on counsel's determination that Jackson's mother was an employee at the Milwaukee County courthouse. However, neither counsel's motion nor oral arguments identified a basis for concluding the case should be removed from Milwaukee County or that counsel had a conflict of interest.

As to whether the circuit court should have recused itself, WIS. STAT. § 757.19(2) specifies situations in which a judge "shall disqualify himself or herself" from the proceedings. The first six paragraphs, §§ 757.19(2)(a)-(f), are objective situations that require disqualification, but none are applicable here. The last paragraph, § 757.19(2)(g), is a subjective test that requires disqualification of a judge when he or she "determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner." Here, the court stated that he did not know Jackson's mother and could remain impartial. Indeed, we presume that judges are unbiased. *State v. Pinno*, 2014 WI 74, ¶92, 356 Wis. 2d 106, 850 N.W.2d 207. We agree with appellate counsel's analysis as to this issue and determine that there are no issues of arguable merit that could arise from the court's decision not to recuse itself prior to sentencing.

Lastly, with regard to the circuit court's sentencing decision, we note that sentencing is a matter for the circuit court's discretion. *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. It must also determine which objective or objectives are of greatest importance. *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 it may consider additional 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 court's discretion. *Id.*

Our review of the record confirms that the circuit court appropriately considered the relevant sentencing objectives and factors. The resulting sentences were within the potential maximums authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and 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).

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

Upon the foregoing therefore,

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

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved of further representation of Stephfon Lamar Jackson 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