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DISTRICT II

October 1, 2025

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Fond du Lac County Courthouse
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Patrick J. Gipson Sr., #194476
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1546-CRNM State of Wisconsin v. Patrick J. Gipson, Sr. (L.C. #2021CF11)

Before Neubauer, P.J., Grogan, and Lazar, 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 Patrick J. Gipson, Sr. has filed a no-merit report concluding that no grounds exist to challenge Gipson's convictions for three counts of first-degree recklessly endangering safety with use of a dangerous weapon; one count of attempting to flee a traffic officer; and one count of causing injury by the operation of a motor vehicle, with a restricted controlled substance—the first four counts as a repeater. Gipson has filed a response with attached notes challenging his pleas and sentences and also alleging he was denied the effective assistance of trial counsel. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on

appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21 (2023-24).[1]

An amended Information charged Gipson with the following ten crimes: one count of hit and run causing injury, with use of a dangerous weapon; five counts of first-degree recklessly endangering safety with use of a dangerous weapon; one count of attempting to flee a traffic officer; one count of recklessly causing great bodily harm to a child with use of a dangerous weapon; one count of misdemeanor bail jumping; and one count of causing injury by the operation of a motor vehicle, with a restricted controlled substance—the first nine counts as a repeater. The charges arose from allegations that Gipson drove his car into a group of five individuals after an argument in a nearby picnic area, striking and seriously injuring an eleven-year-old boy, and then attempted to elude police by driving at a high rate of speed and failing to stop at numerous stop signs.

The complaint alleged that Gipson and his ex-girlfriend were arguing during an attempted reconciliation. Gipson's ex-girlfriend walked away, dropping her "stuff" in a parking lot before continuing to a nearby river bank. Some teenagers and pre-teens who saw the argument and saw that the ex-girlfriend was upset asked her if she was okay and if Gipson had laid his hands on her. According to a witness, Gipson initially drove away, but ultimately returned to pick up his ex-girlfriend's purse and jacket. Gipson asked the group, who was now back in the parking lot, where his girlfriend went. They stated that she was "down by the river" before telling Gipson that "he needed to go take care of his girl and that [they] saw what he did." Gipson, who

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

purportedly smelled of alcohol, and was holding a bottle, walked aggressively toward the group before somebody knocked the bottle out of his hand.

According to security camera footage and witness accounts, as the group was walking away from Gipson, he drove his car straight at them at a high rate of speed. They scattered, but Gipson struck one of them, an eleven-year-old boy. The boy was initially on the hood of Gipson's car, but eventually slid off and appeared to be dragged by the car, which stopped when it reached the end of the parking lot. Gipson then backed up and drove away without checking on the boy. The boy was treated for a concussion, a "softball" sized hematoma, and multiple abrasions.

When police later located Gipson's vehicle and attempted to initiate a stop, he fled at a high rate of speed, failing to yield at stop signs, and weaving through traffic. Gipson was ultimately forced to stop when police deployed a tire deflation device. At the time of the offense, Gipson had been released on bond in Fond du Lac County Case No. 2020CM490. As grounds for the repeater enhancer, the complaint also alleged that Gipson had previously been convicted of fleeing or eluding an officer in Washington County Case No. 2018CF557.[2] The State further alleged that Gipson had a detectable amount of cocaine in his blood within three hours of the incident.

The parties ultimately entered into a global plea agreement that resolved the charges in this matter as well as the charges in a misdemeanor case and two traffic cases. In exchange for

[2] Although a "felony" for purposes of the repeater statute does not include traffic crimes, Gipson confirmed at the outset of his sentencing hearing that he had been convicted of a qualifying felony—retail theft—in Fond du Lac County Case No. 2018CF68. Any claim that there was no factual basis for the repeater enhancer would therefore lack arguable merit.

his no-contest pleas to three counts of first-degree recklessly endangering safety with use of a dangerous weapon; one count of attempting to flee a traffic officer; and one count of causing injury by the operation of a motor vehicle, with a restricted controlled substance, with the first four counts as a repeater, the State agreed to recommend that the remaining counts in this and the other cases be dismissed and read in. Both sides remained free to argue at sentencing. Out of a maximum possible 79-year sentence, the circuit court imposed consecutive and concurrent sentences resulting in an aggregate 21-year term, consisting of 14 years of initial confinement followed by 7 years of extended supervision.

The no-merit report addresses whether Gipson knowingly, intelligently, and voluntarily entered his no-contest pleas and whether the circuit court properly exercised its sentencing discretion. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that neither of these potential issues has arguable merit.

In his response to the no-merit report, Gipson argues that his pleas to first-degree recklessly endangering safety are "invalid" because there was no factual basis for these offenses. Specifically, Gipson contends that the element of "utter disregard for human life" was not supported where the court failed to determine whether Gipson engaged in any evasive action to avoid causing harm or otherwise "did in fact have some regard for human life." The element of utter disregard for human life, however, is measured under an objective standard. ***State v. Jensen***, 2000 WI 84, ¶17, 236 Wis. 2d 521, 613 N.W.2d 170. It "does not require the existence of a[ny] particular state of mind in the actor at the time of the crime but only requires that there be conduct imminently dangerous to human life." ***State v. Blanco***, 125 Wis. 2d 276, 281, 371 N.W.2d 406 (Ct. App. 1985) (alteration in original; quoted source omitted). Further, "a factual basis for a plea exists if an inculpatory inference can be drawn from the complaint or facts

admitted to by the defendant even though it may conflict with an exculpatory inference elsewhere in the record and the defendant later maintains that the exculpatory inference is the correct one." ***State v. Black***, 2001 WI 31, ¶16, 242 Wis. 2d 126, 624 N.W.2d 363. Because Gipson's conduct in driving at a high rate of speed directly at the juveniles was imminently dangerous, any challenge to the validity of his pleas based on this challenge to the factual basis would lack arguable merit.

To the extent Gipson contends that his pleas were involuntary because he felt coerced by his counsel's threat to withdraw from representation, the record belies his claim. Gipson confirmed during the plea colloquy that nobody had made any threat or promise to compel him to enter no-contest pleas; that he had sufficient time to think about his decision; and that he had no questions about his pleas.

Gipson further argues that the circuit court violated its duties under WIS. STAT. § 971.08 and ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986), when it failed to advise him that an attorney might discover defenses or mitigating circumstances that would not be apparent to a layperson. Although that warning is included in the information circuit courts are directed to provide to defendants, *see* ***State v. Brown***, 2006 WI 100, 293 Wis. 2d 594, ¶35, 716 N.W.2d 906, it is not clear that the directive applies *when the defendant is already represented by counsel*, as Gipson was here. For instance, we note that the special materials judges routinely use to conduct plea colloquies with represented defendants do not include that information. *See* WIS JI—CRIMINAL SM-32 (2021). Rather, courts typically provide a defendant with information about the assistance that an attorney could provide when obtaining a waiver of counsel before accepting a plea from a pro se defendant. *See* WIS JI—CRIMINAL SM-30 (2006). Ultimately,

Gipson fails to raise a nonfrivolous challenge to the validity of his pleas on any of his stated grounds.

Gipson also asserts that the circuit court erroneously exercised its discretion by "not allowing" a presentence plea withdrawal. After his plea hearing, but before the scheduled sentencing hearing, Gipson sent pro se correspondence to the circuit court alleging that his counsel was ineffective and adding that if his trial counsel could not negotiate a better plea agreement, he would request plea withdrawal. Counsel subsequently filed a motion to withdraw, stating that Gipson wanted a new attorney appointed for the purpose of withdrawing his plea. At the outset of the hearing on counsel's motion, counsel informed the court: "I think, based upon my most recent conversation with Mr. Gipson, that I can withdraw that request to withdraw, that we will be in a position where he will proceed with sentencing … next week and I will be representing him." Gipson then personally confirmed for the court that it was his intent to proceed with sentencing. Any claim that the circuit court erred by "not allowing" a presentence plea withdrawal motion is not supported by the record and, ultimately, lacks arguable merit.

Gipson's response also challenges the effectiveness of his trial counsel. To establish ineffective assistance of counsel, Gipson must show that his counsel's performance was not within the range of competence demanded of attorneys in criminal cases and that the deficient performance resulted in prejudice. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To prove prejudice, Gipson must demonstrate "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty [or no contest] and would have insisted on going to trial." ***Hill v. Lockhart***, 474 U.S. 52, 59 (1985).

Gipson claims his trial counsel was ineffective by failing to investigate his claims that one of the juveniles brandished a weapon and threatened to shoot him. Gipson adds that his fear of imminent danger constituted a "coercion defense" to the charged crimes. Gipson's valid no-contest pleas, however, waive all non-jurisdictional defects and defenses. ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. Additionally, Gipson fails to establish prejudice based on this claimed deficiency of trial counsel. Even assuming that trial counsel could have found evidence of an imminent threat to Gipson, it does not explain why Gipson drove toward the juveniles rather than away from any perceived threat. Further, the record, including security camera footage of the parking lot, does not support any claim that the juveniles were surrounding his vehicle or otherwise impeding his exit from the area. Rather, the video shows the juveniles walking in the middle of a parking lot when Gipson's car approaches them from behind and drives straight at them at a high rate of speed. Therefore, any claim that Gipson's trial counsel was ineffective by failing to investigate this theory of defense would lack arguable merit.

Gipson additionally claims that his trial counsel's purported failure to investigate a "coercion defense" rendered him ineffective in negotiating the plea agreement. Gipson, however, fails to establish how an investigation into this possible defense would have favorably impacted plea negotiations. Further, Gipson faced allegations of ten crimes in this matter, as well as charges in three other cases. As a result of the global plea agreement, his sentence exposure in the present case was reduced from a total of 159 years to 79 years, with half of the charges dismissed and read in. Based on this record, there would be no arguable merit to a claim that trial counsel was ineffective by failing to adequately negotiate the plea agreement.

Gipson's response also challenges the circuit court's sentencing discretion. As noted above, we agree with appellate counsel's conclusion that the record discloses no arguable basis for challenging the sentences imposed. In reviewing a sentence, this court is limited to determining whether there was an erroneous exercise of discretion. *See* ***State v. Echols***, 175 Wis. 2d 653, 681, 499 N.W.2d 631 (1993). Proper sentencing discretion is demonstrated if the record shows that the court "examined the facts and stated its reasons for the sentence imposed, 'using a demonstrated rational process.'" ***State v. Spears***, 147 Wis. 2d 429, 447, 433 N.W.2d 595 (Ct. App. 1988) (citation omitted).

Here, the circuit court considered the seriousness of the offenses; Gipson's character, including his criminal history; and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. There is a presumption that Gipson's aggregate sentence, which is well within the maximum allowed by law, is not unduly harsh or unconscionable, nor "so excessive and unusual" as to shock public sentiment. *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507; *see also* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Gipson nevertheless contends that the court did not factor Gipson's stated remorse into its sentencing decision. That the court did not specifically mention Gipson's remorse does not necessarily mean it was not considered by the court but, rather, that the court placed little to no weight on it. Ultimately, "[i]t remains within the discretion of the circuit court to discuss only those factors it believes are relevant, and the weight that is attached to a relevant factor in sentencing is also within the wide discretion of the sentencing court." ***State v. Stenzel***, 2004 WI App 181, ¶16, 276 Wis.2d 224, 688 N.W.2d 20 (citation omitted).

Gipson also claims that the court relied on inaccurate information at sentencing. Defendants have a due process right to be sentenced on the basis of accurate information. ***State v. Johnson***, 158 Wis. 2d 458, 468, 463 N.W.2d 352 (Ct. App. 1990). In order to establish a due process violation, the defendant has the burden of proving by clear and convincing evidence both that the information was inaccurate and that the court actually relied on the inaccurate information in sentencing. ***State v. Littrup***, 164 Wis. 2d 120, 132, 473 N.W.2d 164 (Ct. App. 1991).

Gipson contends that the court improperly relied on physical and emotional injuries suffered by the eleven-year-old victim that are not supported by medical reports. A sentencing court, however, may "conduct an inquiry broad in scope and largely unlimited either as to the kind of information considered or the source from which it comes." ***Handel v. State***, 74 Wis. 2d 699, 703, 247 N.W.2d 711 (1976). Consistent with the probable cause section of the complaint and the presentence investigation report (PSI), the court recounted that the victim had "a large bump on his head, large abrasion to his right shoulder blade, and a large abrasion down his lower right back to his right buttock." The court added:

> People report that this 11-year-old has become angrier, he cries at night, he's depressed, and people have new medical bills and he has new medical needs. This is, of course, an experience that an 11-year-old victim will likely remember for the rest of his life, but it impacts the other people in that group who did not happen to be hit.
>
> [Y]our reckless behavior caused burns to the left side from being dragged, he had missing hair which is likely permanent, concussion, multiple cuts and bruises, there was also mention that he has an inability to bend over or do things like sitting on a couch without aid.

Ultimately, Gipson fails to establish that this information was inaccurate or that it was improper for the court to consider it.

Gipson additionally claims that the court erred by stating that despite any perceived threat, Gipson could have driven away. According to Gipson, that is exactly what he did—reversed away from the juveniles, driving in the opposite direction. As noted above, the record belies his claim and shows that Gipson only reversed and drove away *after* hitting the boy. Because Gipson again fails to establish that the referenced information was inaccurate or that it was improper for the court to consider it, any challenge to the sentence on this ground would lack arguable merit.

Our independent review of the record discloses no other potential issue for appeal.[3] Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Thomas Brady Aquino is relieved of his obligation to further represent Patrick J. Gipson, Sr. 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

[3] To the extent Gipson raised additional complaints in his response that we have not specifically addressed, they are also rejected because we discern no potential issues of arguable merit.