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DISTRICT III

August 9, 2022

To:

Hon. Vincent R. Biskupic
Circuit Court Judge
Electronic Notice

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
Electronic Notice

Erica L. Bauer
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Brandon S. Meier 457356
Jackson Correctional Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2020AP305-CRNM State of Wisconsin v. Brandon S. Meier
(L. C. No. 2017CF873)

Before Stark, P.J., Hruz and Gill, 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 Brandon Meier filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),[1] concluding that no grounds exist to challenge Meier's convictions for false imprisonment and criminal damage to property, both counts as a repeater, as a domestic abuse repeater, and as acts of domestic abuse. Meier filed responses challenging the prosecutor's charging discretion and the effectiveness of his trial counsel. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude that there is

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

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.

The State initially charged Meier with false imprisonment, misdemeanor battery, criminal damage to property, and disorderly conduct, with all four counts as acts of domestic abuse, the first count as a repeater, and the latter three counts as a domestic abuse repeater. The complaint alleged that Tina[2] was at a Grand Chute gas station with her five-year-old daughter when Meier—the child's father and Tina's former live-in boyfriend—forced his way into Tina's vehicle and forced her to drive. After stopping the vehicle in an attempt to drop Meier off, he threatened to "beat her ass." When Tina attempted to exit the vehicle, Meier grabbed her arm to prevent her from leaving and struck her in the back of the head with a closed fist, causing her pain. According to Tina, Meier then placed his arms around her neck and restricted her breathing for approximately thirty seconds. Tina was eventually able to free herself and fled the car to call 911 before realizing her cell phone was in the car. Because Meier had then exited the vehicle, Tina was able to enter the car and lock the doors. Meier then started to punch the passenger side window and make other attempts to open the door, resulting in damage to the door and its handle. When law enforcement responded to the scene, they observed the damage to the car door, found Tina "crying hysterically," and noted that the child "appeared to be very distraught."

In support of the repeater enhancer, the complaint noted that Meier had been convicted of at least one felony within the last five years—a conviction for felony bail jumping that remained

[2] Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use a pseudonym instead of the victim's name.

of record and unreversed. With respect to the domestic abuse enhancer, the complaint recounted that during the ten-year period immediately prior to the present offenses, Meier was convicted on at least two separate occasions of a felony or a misdemeanor for which a court imposed or waived a domestic abuse surcharge.

Meier waived the preliminary hearing. Three weeks later, the State amended the complaint to add one count of strangulation and suffocation as a repeater, as a domestic abuse repeater, and as an act of domestic abuse. Instead of misdemeanor battery, the amended complaint charged Meier with substantial battery as a repeater, as a domestic abuse repeater, and as an act of domestic abuse. The remaining counts from the original complaint were also amended to charge Meier as a repeater, as a domestic abuse repeater, and as acts of domestic abuse.

The State filed a motion to admit other-acts evidence consisting of past violence against Tina, in which Meier allegedly pushed her down the stairs. The State also sought to introduce evidence of Meier's Winnebago County convictions for criminal damage to property and disorderly conduct involving another former girlfriend of Meier. Meier opposed the motion. At a hearing on the motion, the circuit court engaged in the three-step analysis for determining the admissibility of other-acts evidence, *see* ***State v. Sullivan***, 216 Wis. 2d 768, 771-73, 576 N.W.2d 30 (1998), and granted that part of the motion seeking to admit evidence of past abusive behavior toward Tina. The court deferred its ruling on the admissibility of other-acts evidence related to Meier's Winnebago County convictions. Before a decision on the remainder of the State's other-acts motion was rendered, the parties entered into a plea agreement.

In exchange for Meier's no-contest pleas to false imprisonment and criminal damage to property as charged in the amended complaint, the State agreed to recommend that the circuit court dismiss and read in the remaining counts. The State remained free to argue about the length and terms of extended supervision, but it agreed to cap its total initial confinement recommendation at two and one-half years. Out of a maximum possible aggregate sentence of eighteen years and nine months,[3] the circuit court imposed an eight-year sentence for the false imprisonment conviction, consisting of five years of initial confinement followed by three years of extended supervision, consecutive to any other sentence Meier was then serving. With respect to Meier's conviction for criminal damage to property, the court withheld sentence and placed Meier on three years of probation, consecutive to his confinement time for the false imprisonment offense.

Meier filed a postconviction motion for sentence modification, asserting that he was sentenced on the basis of inaccurate information. Specifically, Meier asserted that although he is not eligible for the substance abuse program, his eligibility for that program was a significant factor in the circuit court's sentencing objectives. After a hearing, the court granted the motion and ultimately reduced Meier's term of initial confinement to four years.

The no-merit report addresses whether: (1) the State properly amended the complaint; (2) Meier knowingly, intelligently, and voluntarily entered his no-contest pleas; (3) the circuit court properly exercised its sentencing discretion, including whether it properly exercised its

[3] When two penalty enhancers are applicable to the same crime, the length of the second penalty enhancer is based on the maximum term for the base crime as extended by the first penalty enhancer. *See* ***State v. Pernell***, 165 Wis. 2d 651, 658-60, 478 N.W.2d 297 (Ct. App. 1991).

discretion when resolving the sentence modification motion; and (4) Meier is entitled to sentence credit. We note that the plea questionnaire form mistakenly identified the maximum penalty for criminal damage to property with the repeater and domestic abuse repeater enhancers as six years and ninety days. During the plea colloquy, however, the court properly informed Meier that the maximum penalty for that offense with the repeater enhancers was six years and nine months, and Meier confirmed his understanding of that penalty. Therefore, any challenge to the plea based on the plea form mistake would lack arguable merit. Upon reviewing the record, we otherwise agree with counsel's analysis and conclusion that there is no arguable merit to any of the aforementioned issues. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further. With respect to the court's decision to admit other-acts evidence, Meier has forfeited the right to challenge that ruling by virtue of his valid no-contest pleas. *See* ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

In his response to the no-merit report, Meier contends that the prosecutor improperly amended the complaint after Meier waived his preliminary hearing, thereby violating his right to a preliminary hearing on the amended charges. However, a waiver of the preliminary hearing in no way proscribes the prosecutor's discretion to charge different or higher crimes than those alleged in the original complaint. ***State v. Michels***, 141 Wis. 2d 81, 88-89, 414 N.W.2d 311 (Ct. App. 1987).

> [W]hen a defendant waives a preliminary hearing, he or she waives any inquiry into the offense charged in the complaint and, as to any offense growing out of the events referred to in the complaint, a defendant is in the same position as if a preliminary hearing had been held on those charges as well.

Id. at 89. The record shows that the additional and amended charges arose from the events described in the complaint. Therefore, there is no arguable merit to Meier's claims that the amended complaint circumvented his right to a preliminary hearing or that the State was limited to prosecuting the charges in the original complaint.

Meier also claims he was denied the effective assistance of trial counsel. To establish ineffective assistance of counsel, Meier 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, Meier must demonstrate that "there is a reasonable probability that, but for counsel's errors, he would not have [pled] guilty and would have insisted on going to trial." ***Hill v. Lockhart***, 474 U.S. 52, 59 (1985).

Meier alleges that his trial counsel did not advise him that the State had amended the charges against him before he entered his pleas. The record, however, reflects that before entering his no-contest pleas, Meier confirmed his understanding of the plea agreement, confirmed that he had reviewed the criminal complaint and the Information (which included the amended charges) "many times," and that he knew the allegations "and also the charging section." Because Meier confirmed his knowledge of the amended charges, any claim that he was prejudiced by this claimed deficiency would lack arguable merit.

Next, Meier claims that his trial counsel failed to comply with appellate counsel's request for discovery "and other paper work." Meier, however, acknowledges that his appellate counsel was able to obtain the requested documents from the State. Meier also asserts, generally, that his trial counsel was "going through the motions." To support his ineffective assistance claim,

Meier states that he filed a complaint against his trial counsel with the Office of Lawyer Regulation (OLR). Meier supplemented his original no-merit response with notice that his trial counsel received an eighteen-month suspension for failing to respond to Meier's grievance. That counsel was suspended by OLR for failing to respond to Meier's grievance does not, alone, establish that counsel was deficient in his representation of Meier or that Meier was prejudiced by any purported deficiency. Ultimately, our review of the record and the no-merit report discloses no basis for challenging trial counsel's performance and no grounds for appellate counsel to request a ***Machner***[4] hearing.

Our independent review of the record discloses no other potential issue for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Erica L. Bauer is relieved of her obligation to further represent Brandon S. Meier 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

[4] ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).