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DISTRICT II

December 26, 2024

To:

Hon. Anthony G. Milisauskas
Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Douglas C. McIntosh
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Wesley T. Jordan #324519
Fox Lake Correctional Institution
P.O. Box 147
Fox Lake, WI 53933

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

2023AP1804-CRNM	State of Wisconsin v. Wesley T. Jordan (L.C. #2021CF530)
2023AP1838-CRNM	State of Wisconsin v. Wesley T. Jordan (L.C. #2021CF595)
2023AP1839-CRNM	State of Wisconsin v. Wesley T. Jordan (L.C. #2021CF692)

Before Neubauer, 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).

Wesley T. Jordan appeals from judgments of the circuit court convicting him of six criminal offenses in three cases. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22) and ***Anders v. California***, 386 U.S. 738 (1967).[1] Jordan filed a

[1] Attorney Lauren J. Breckenfelder filed the no-merit report in these consolidated no-merit appeals. Breckenfelder subsequently withdrew from representation, and Attorney Douglas C. McIntosh was appointed to represent Jordan in these appeals.

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

response to counsel's no-merit report. After reviewing the record, counsel's report, and Jordan's response, we conclude there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgments. *See* WIS. STAT. RULE 809.21.

Jordan was convicted of felony intimidation of a witness, disorderly conduct, and misdemeanor battery (both with domestic abuse enhancers), two counts of felony intimidation of a victim, and contempt of court after he pled guilty to those offenses in accordance with a plea agreement. Forty-nine other criminal charges against Jordan were dismissed and read in as part of the agreement. The charges arose from Jordan's abusive conduct toward the victim, his then-fiancée. Jordan was also charged based on his repeated attempts to convince the victim to recant and to prevent her from testifying in court, as well as multiple violations of no-contact orders. For Jordan's behavior, the circuit court imposed an aggregate sentence of eight years and nine months of initial confinement and six years of extended supervision. This no-merit appeal follows.

The no-merit report addresses: (1) whether Jordan's pleas were entered knowingly, voluntarily, and intelligently; and (2) whether the circuit court properly exercised its discretion at sentencing. In seeming anticipation of points raised in Jordan's response, the no-merit report also addresses: (3) whether the court relied on inaccurate information at sentencing; and (4) whether any new factor exists that would entitle Jordan to resentencing. We address each point in turn below.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other

manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. ***State v. Bangert***, 131 Wis. 2d 246, 272-276, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Pursuant to a plea agreement, Jordan pled guilty to six out of fifty-five charges against him. The circuit court conducted a standard plea colloquy, inquiring into Jordan's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring his understanding of the nature of the charge, the penalty range and other direct consequences of the pleas, and the constitutional rights being waived. *See* ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and ***Bangert***, 131 Wis. 2d at 266-72.

Jordan's counsel stated on the record that there was a factual basis for the pleas established by the criminal complaints. There is nothing in the no-merit report, the response, or the record that leads us to conclude otherwise. The circuit court made a conscious effort during the plea colloquy to ensure that there was a factual basis to support the pleas as to each count. In addition, Jordan indicated that he had spent sufficient time with trial counsel going over the plea questionnaire and told the court that he had no questions regarding the process. Nothing in our independent review of the record would support a claim that trial counsel rendered ineffective assistance. Jordan has not alleged any other facts in his response that would give rise to a manifest injustice. Therefore, the plea was valid and operated to waive all nonjurisdictional

defects and defenses, aside from any suppression ruling.[2] *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

There also is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. In imposing sentence, the court considered the seriousness of the offense, Jordan's character, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶40-44, 270 Wis. 2d 535, 678 N.W.2d 197. Both Jordan and his attorney had the opportunity to address the court directly, and both did so prior to the court's imposition of sentence. Notably, at allocution, Jordan made the following admissions of guilt and remorse:

> On May 4th of last year I failed because I behaved inexcusably. I failed because I reacted inappropriately. I failed because I lost control of my emotions.
>
> Looking back, it's hard to stomach the fact that I could act so carelessly, intimidating and angrily toward the people I love and mean the most in my life.
>
> I hurt and frightened [the victim], my life-long partner and the mother of my children, as well as frightening my two daughters, son and grandson.
>
> To [Jordan's fiancée, children and grandson], I am truly, truly sorry.
>
> What am I sorry for? Well, plenty. There can never be a statement more true than when I say that I am not sorry that I have been locked away from society for the last year. I deserve that.
>
> What I am sorry for is betraying the trust of the woman I love with my egregious behavior. I drove her away and lost the love that bonded us together for 23 years.

[2] Jordan brought no suppression motion, and nothing in the record suggests a basis for suppression of any relevant evidence.

> I'm sorry for losing the respect and trust of my two daughters that are the crown jewels of my life. I'm sorry for leaving my two sons out in the world without a father to protect and guide them.
>
> My job is protect, nurture and uplift my family. And all this has been lost. This fact hurts me more than any cell door slamming can ever hurt. That is not who I am.
>
> I can only pray and ask their forgiveness with a chance to reconcile those precious relationships.

The court also considered statements made at sentencing from Jordan's father and the victim, and noted its consideration of documents submitted by defense counsel indicating that Jordan had voluntarily completed the "Living Free" program addressing several of his treatment needs.

Next, there is no arguable merit to a claim that Jordan's sentence was excessive. The circuit court imposed a sentence of eight years and nine months of initial confinement and six years of extended supervision. For the offenses to which he pled guilty, Jordan faced a possible sentence of seventeen years of initial confinement and fifteen years of extended supervision. Jordan also faced significant financial consequences, including fines totaling over $90,000, court costs, and domestic abuse surcharges but, as noted in the no-merit report, the court did not impose financial penalties on Jordan. Under the circumstances, it cannot reasonably be argued that Jordan's sentence is excessive, much less so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

In his response to the no-merit report, Jordan asserts that resentencing is warranted. He submits four grounds for resentencing—reliance by the circuit court on inaccurate information, ineffective assistance of trial counsel, violation of his due process rights, and the existence of evidence constituting a new factor. However, Jordan's entire argument in favor of resentencing all rests on one consideration; namely, Jordan's repeated insistence that the court sentenced him

based on a misunderstanding that the victim and Jordan's children feared him. Jordan asserts that he has evidence to the contrary that should have been presented to the court. Specifically, Jordan refers to cards, letters, and jail phone call transcripts reflecting communications between Jordan and his family members that were not presented by trial counsel at sentencing. He argues that those communications allegedly "prove[]" that no one in his family feared him. As we now discuss, there is no merit to any argument that Jordan advances to support resentencing.

First, the record belies Jordan's position that Jordan's family members did not fear him; instead, the record supports the sentencing court's contrary finding that Jordan's family members truly do fear Jordan and need protection from him. We have already addressed the fact that the complaints formed the factual basis for the plea, which trial counsel affirmed was true and correct. Jordan does not challenge the factual basis in his no-merit response. More importantly, as noted above, in direct contradiction of his insistence in the response that there was no evidence supporting the court's finding that Jordan's behavior instilled fear in his family members, Jordan admitted in open court to having committed the criminal offenses and to having intimidated his family members.

Additionally, although he alleges ineffective assistance of trial counsel, Jordan fails to demonstrate that absent trial counsel's deficient performance, he would have gone to trial rather than plead guilty. *See* ***State v. West***, 2024 WI App 35, ¶59, 412 Wis. 2d 758, 8 N.W.3d 460 ("In the context of plea withdrawal, a defendant must establish that but for counsel's errors, he would have proceeded to trial rather than enter a plea." (citation omitted)).

Finally, Jordan fails to show that the cards, letters, and jail phone calls constitute a "new factor" entitling him to resentencing. In other words, he has not explained or demonstrated to

this court how those communications are "'highly relevant' to the sentence so that [their] newly revealed existence 'frustrates' the court's sentencing intent." *See* ***State v. Ramuta***, 2003 WI App 80, ¶8, 261 Wis. 2d 784, 661 N.W.2d 483 (citation omitted). There is no arguable merit to a claim that Jordan is entitled to resentencing.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgments of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Douglas C. McIntosh is relieved from further representing Wesley T. Jordan in this appeal. *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