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DISTRICT I

February 11, 2025

To:

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Circuit Court Judge
Electronic Notice

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

2024AP585-CRNM State of Wisconsin v. Michael Anthony Huddleston
(L.C. # 2022CF248)

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).

Michael Anthony Huddleston appeals his judgment of conviction entered after he pled guilty to neglecting a child where the consequence is death, and possession of a firearm by a felon as a habitual criminality repeater. His appellate counsel, Attorney Christopher D. Sobic, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).[1] Huddleston filed a response. Upon this court's independent review of

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

the record as mandated by ***Anders***, counsel's report and Huddleston's response, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

The charges against Huddleston stem from the shooting death of his eight-year-old daughter, T.H., in January 2022. Police officers were dispatched to Aurora Sinai Medical Center to investigate; while there, Huddleston told them that he had been "showing off" with the gun in front of his children, and that he had accidentally shot T.H. T.H. died of a single gunshot wound to her chest.

Huddleston also admitted to police that he had drunk several pints of tequila that day. He consented to a blood draw, which revealed a blood alcohol concentration of 0.17.

Huddleston was initially charged with first-degree reckless homicide for T.H.'s death. However, pursuant to a plea agreement, that charge was amended to neglecting a child where the consequence is death. Huddleston pled guilty to that amended charge, as well as to a charge of being a felon in possession of a firearm with a habitual criminality repeater.

The circuit court imposed a global sentence of twenty years of initial confinement followed by fifteen years of extended supervision. It also set restitution in the amount of $419.44, to reimburse the victims' compensation fund for lost wages paid to T.H.'s mother; Huddleston did not object. This no-merit appeal follows.

In the no-merit report, appellate counsel addresses two issues: whether there would be arguable merit to appealing the validity of Huddleston's pleas; and whether there would be arguable merit to a claim that the circuit court erroneously exercised its discretion in sentencing

Huddleston. We agree with appellate counsel's analysis that there would be no arguable merit to an appeal of either of these issues.

A plea is not constitutionally valid if it is not knowingly, voluntarily, and intelligently entered. ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). This may be established if the requirements set forth in WIS. STAT. § 971.08 and ***Bangert*** are not met during the plea colloquy by the circuit court. ***State v. Brown***, 2006 WI 100, ¶¶23, 34-35, 293 Wis. 2d 594, 716 N.W.2d 906.

The record here reflects that the plea colloquy by the circuit court substantially complied with these requirements. The circuit court did not specifically inform Huddleston that he was waiving his constitutional right to have twelve jurors unanimously determine his guilt. However, this right was reviewed in the plea questionnaire with his trial counsel, which the court confirmed that Huddleston had signed and understood. This further demonstrates that Huddleston's pleas were knowingly, voluntarily, and intelligently entered. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827, 416 N.W.2d 627 (Ct. App. 1987) (providing that the circuit court may "refer to some portion of the record or some communication between defense counsel and defendant" to demonstrate that a defendant understands the constitutional rights being waived); *see also* ***State v. Pegeese***, 2019 WI 60, ¶39, 387 Wis. 2d 119, 928 N.W.2d 590 (stating that during the plea colloquy "a formalistic recitation of the constitutional rights being waived is not required"). Therefore, we agree with appellate counsel's conclusion that there would be no arguable merit to a challenge of the validity of Huddleston's pleas.

With regard to sentencing, the record reflects that the circuit court properly exercised its discretion in considering relevant sentencing objectives and factors. *See* ***State v. Gallion***, 2004

WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The primary sentencing factors that must be considered by the court are the gravity of the offense, the character of the offender, and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Other relevant factors may also be considered. ***Id.*** The weight given to these factors is within the court's discretion. ***Id.***

At the sentencing hearing, as well as in the presentence investigation report, Huddleston stated that T.H. had "got ahold of the gun" and shot herself, although there was no evidence that was the case. The circuit court found that these statements were "patently unbelievable" due to the nature of T.H.'s wound, and demonstrated that Huddleston had no remorse for her death. The court also noted Huddleston's "lengthy" criminal record, observing that Huddleston was prohibited from possessing a firearm at the time of T.H.'s death because he was already a convicted felon, and further, that he was on probation at that time for another offense; yet, he still had a gun in his house. These are all proper and relevant factors for consideration. *See* ***id.***

For these reasons, the circuit court therefore considered this to be a case where the maximum penalty was warranted.[2] Nevertheless, as Huddleston's sentences are within the statutory maximums, they are presumed not to be unduly harsh or unconscionable. *See* ***State v. Grindemann***, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507. Therefore, we agree with appellate counsel's assessment that there would be no arguable merit to a challenge of Huddleston's sentences.

[2] However, as appellate counsel noted, the circuit court did not impose the enhanced time available for being a habitual offender with regard to the count of possession of a firearm by a felon. *See* WIS. STAT. § 939.62(1)(b).

In his response, Huddleston argues that the plea colloquy was deficient because the circuit court failed to inform him that it was not bound by the State's sentence recommendation of fifteen years of initial confinement followed by ten years of extended supervision. However, the record reflects that the court plainly explained this to Huddleston during the plea colloquy, and he indicated that he understood:

> THE COURT: Do you understand that sentencing is up to the court? I'll hear from the State. I'll hear from your attorney. I'll hear from you. I'll hear from the victim's family. I'll hear from others, but the sentence is up to me; do you understand?
>
> THE DEFENDANT: Yes, I understand.
>
> THE COURT: It might be what the State is asking for, it might be less, it might be more; do you understand that?
>
> THE DEFENDANT: Yes, I understand.

Huddleston asserts that the circuit court made "a number of aggressive comments to him and his family" during the sentencing hearing. Presumably, Huddleston is referencing comments made by the court during its discussion of Huddleston's attempt to "blame" T.H. for shooting herself, which the court found indicated a lack of remorse. This discussion was in the context of the court's analysis of proper and relevant sentencing factors, as noted above. *See* ***Ziegler***, 289 Wis. 2d 594, ¶23. In fact, whether a defendant shows remorse is specifically delineated as a relevant factor the court may consider. ***Id.*** The court gave great weight to this factor, which is firmly within its discretion. *See* ***id.***

Finally, Huddleston contends that the State committed a ***Brady*** violation. *See* ***Brady v. Maryland***, 373 U.S. 83 (1963). Under ***Brady***, a defendant has a due process right to any favorable evidence "material either to guilt or to punishment" that is in the State's possession. ***Id.*** at 87. It appears that Huddleston believes he has a claim that his confession was the result of

"coercive tactics" by the police because he was intoxicated at the time he made the inculpatory comments to officers at the hospital about shooting T.H. This is not a basis for a ***Brady*** claim. *See* ***id.*** Furthermore, any claims relating to Huddleston's statements to police are waived pursuant to the guilty plea waiver rule. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (stating that the "general rule is that a guilty … plea 'waives all nonjurisdictional defects, including constitutional claims'" (citation omitted)).

We therefore conclude that Huddleston has raised no issues of arguable merit in his response. Our independent review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Huddleston further in this appeal.

For all the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Christopher D. Sobic is relieved of further representation of Michael Anthony Huddleston 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