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DISTRICT III

February 11, 2025

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

2024AP309-CRNM State of Wisconsin v. Dennis Henry Sutrick
(L. C. No. 2020CF1406)

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 Dennis Henry Sutrick has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22),[1] concluding that no grounds exist to challenge Sutrick's conviction for first-degree reckless homicide or the order denying Sutrick's postconviction motion for plea withdrawal.[2] Sutrick has filed a response to the no-merit report, raising several issues. Upon our

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

[2] Attorney Andrew Hinkel filed the no-merit report. Attorney Lucas Swank was later substituted as appellate counsel for Sutrick.

independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction and the order denying Sutrick's postconviction motion. *See* WIS. STAT. RULE 809.21.

The State charged Sutrick with first-degree intentional homicide. The complaint alleged that Sutrick had beaten a woman in an Ashwaubenon motel room, causing her death. Sutrick ultimately entered a no-contest plea to an amended charge of first-degree reckless homicide, pursuant to a plea agreement. Following a plea colloquy, supplemented by a plea questionnaire and waiver of rights form, the circuit court accepted Sutrick's plea, finding that it was knowingly, intelligently, and voluntarily entered.

The circuit court ordered a presentence investigation report (PSI), which recommended a sentence consisting of twenty years' initial confinement followed by six years' extended supervision. At sentencing, the State recommended a sentence consisting of forty years' initial confinement followed by fifteen years' extended supervision, while the defense recommended ten years' initial confinement followed by ten years' extended supervision.

During its sentencing remarks, the circuit court considered the seriousness of the offense; Sutrick's character, including his criminal history; Sutrick's failure to take advantage of past opportunities for treatment; his acceptance of responsibility by entering a no-contest plea; the support provided to him by his family members; and the need to protect the public, given Sutrick's history of domestic violence. Consistent with the State's recommendation, the court sentenced Sutrick to forty years' initial confinement followed by fifteen years' extended supervision. The parties agreed that Sutrick was entitled to 270 days of sentence credit, and the

court awarded him credit in that amount. The defense stipulated that Sutrick was ineligible for the Challenge Incarceration and Substance Abuse Programs.

Sutrick subsequently filed a postconviction motion for plea withdrawal. He argued that his plea was not entered knowingly, intelligently, and voluntarily because the circuit court failed to confirm his understanding of the plea agreement's terms during the plea colloquy. He also alleged that his trial attorney incorrectly told him that the plea agreement required the State to cap its sentence recommendation at the recommendation in the PSI. He therefore asserted, as an additional basis for plea withdrawal, that his trial attorney was constitutionally ineffective. The court denied Sutrick's postconviction motion, following an evidentiary hearing at which both Sutrick and his trial attorney testified.

The no-merit report first addresses whether there would be any arguable merit to a claim that Sutrick's plea was not entered knowingly, intelligently, and voluntarily. We agree with appellate counsel that this issue lacks arguable merit.

As explained in the no-merit report, the circuit court complied with its mandatory duties during the plea colloquy, *see* ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, with one exception. Specifically, the court failed to ascertain whether any promises or agreements were made in connection with Sutrick's anticipated plea. *See* ***id.*** A defective plea colloquy does not, however, automatically entitle a defendant to withdraw his or her plea. Instead, when the defendant has shown a defect in the plea colloquy and has alleged that he or she did not know or understand the information that should have been provided, "the burden will then shift to the state to show by clear and convincing evidence that the defendant's plea was

knowingly, voluntarily, and intelligently entered," despite the defective plea colloquy. ***State v. Bangert***, 131 Wis. 2d 246, 274, 389 N.W.2d 12 (1986).

Here, the circuit court determined, following a postconviction evidentiary hearing, that the State had met its burden to show that Sutrick's plea was knowing, intelligent, and voluntary. *See* ***id.*** There would be no arguable merit to a claim that the court erred in that regard.

Although the plea agreement was not stated on the record during the plea hearing, the plea questionnaire and waiver of rights form stated the agreement as: "Order PSI, argue disposition." During the plea hearing, Sutrick's trial counsel stated that he had reviewed the plea questionnaire with Sutrick "in person at the Brown County Jail." Trial counsel explained that he had signed the plea questionnaire on Sutrick's behalf due to procedures that were in place at the jail at that time. Sutrick then confirmed that he did not need additional time to review the plea questionnaire with his attorney and that he "[w]ould … have signed the form [himself] if [he had been] able to" do so.

Conversely, at the postconviction hearing, Sutrick testified that he never reviewed the plea questionnaire with his attorney and that he was not aware his attorney had signed that form on his behalf until the plea hearing. He testified that he did not know what the words "argue disposition" on the plea questionnaire meant and that his attorney told him the plea agreement required the State to cap its sentence recommendation at the recommendation in the PSI. Sutrick admitted telling the circuit court during the plea hearing that he had reviewed the plea questionnaire with his attorney and that he would have signed the form if he could have, but he stated he made those representations to the court because he "believed that [he] was agreeing to the plea deal that [he] was presented, [with] the State['s] recommendation being capped at the

PSI recommendation." Sutrick also admitted that he did not raise any issue regarding his misunderstanding of the plea agreement at sentencing when the State recommended a sentence that exceeded the PSI's recommendation.

Sutrick's trial attorney testified that he reviewed the plea questionnaire and waiver of rights form with Sutrick at the Brown County Jail before the plea hearing. He explained that he signed the form on Sutrick's behalf due to jail procedures that were in place at that time because of the COVID-19 pandemic. Counsel testified that he had no recollection of telling Sutrick that the State had agreed to cap its sentence recommendation at the PSI's recommendation. He further testified that if the plea agreement had included that term, he would have noted it on the plea questionnaire.

Trial counsel also testified that Sutrick's sentencing hearing was delayed at the State's request. During the scheduling hearing when a new sentencing date was set, the State specifically stated that it would be making a recommendation at sentencing that was "different" from the PSI's recommendation. Trial counsel testified that Sutrick did not "raise any issue" at that hearing "with respect to the State recommending something different than what the PSI was recommending." Trial counsel also testified that Sutrick never raised an issue at sentencing "about the State recommending something higher than the PSI."

On this record, the circuit court determined that Sutrick "conclusively understood the express terms of the [plea] agreement, and his plea was freely, knowingly, intelligently, and voluntarily made." The court specifically found that Sutrick's testimony at the postconviction hearing was not "very credible … at all" and that trial counsel's testimony was "substantially more credible." Based on the evidence in the record, the court's credibility determinations are

not clearly erroneous. As such, we will not disturb them on appeal. *See* ***State v. Terrance J.W.***, 202 Wis. 2d 496, 501, 550 N.W.2d 445 (Ct. App. 1996). Given those credibility determinations, there would be no arguable merit to a claim that Sutrick's plea was not knowing, intelligent, and voluntary due to the defective plea colloquy.

In addition, based on trial counsel's testimony, the circuit court properly rejected Sutrick's claim that trial counsel performed deficiently by misinforming Sutrick of the plea agreement's terms. Consequently, any argument that the court erred by rejecting Sutrick's ineffective assistance claim would also lack arguable merit. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984) (to prevail on an ineffective assistance claim, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defense).

The no-merit report further asserts that there are no arguable grounds to challenge the circuit court's exercise of its sentencing discretion. We agree with appellate counsel's conclusion in that regard. After considering appropriate sentencing factors and objectives, *see* ***State v. Gallion***, 2004 WI 42, ¶¶40-43 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197, the court imposed a sentence authorized by law. Given the gravity of the offense, it cannot reasonably be argued that Sutrick's sentence is so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Moreover, appellate counsel asserts in the no-merit report that he is not aware that the court relied on any inaccurate information at sentencing, nor is he aware of any new factors that would provide grounds to file a motion for sentence modification. Sutrick does not argue otherwise in his response to the no-merit report.

Instead, in his response, Sutrick begins by arguing that his trial attorney was constitutionally ineffective in ten respects. Three of these arguments lack arguable merit, for the reasons already explained above. Namely, based on trial counsel's testimony at the postconviction hearing, which the circuit court credited, trial counsel was not ineffective by misinforming Sutrick of the plea agreement's terms, by signing Sutrick's name on the plea questionnaire and waiver of rights form, or by signing Sutrick's name on that form without his permission.

Sutrick's remaining ineffective assistance claims also lack arguable merit. Sutrick asserts that his trial counsel was constitutionally ineffective by: (1) failing to investigate the case or possible defenses; (2) failing to act with reasonable diligence and promptness in representing Sutrick; (3) failing to keep Sutrick informed about the status of the case; (4) "failing to take steps to the extent reasonably practicable to protect … Sutrick's interests"; (5) engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation; (6) failing to abide by Sutrick's decisions concerning the objectives of representation; and (7) failing to respond to Sutrick's reasonable requests for information.

These generalized assertions are insufficient to give rise to an arguably meritorious claim that Sutrick's trial counsel was constitutionally ineffective. Sutrick does not explain what additional investigation trial counsel should have conducted; how trial counsel failed to act with reasonable diligence and promptness; what additional information counsel should have provided to Sutrick regarding the status of the case; how counsel failed to protect Sutrick's interests; which conduct by counsel was deceitful, fraudulent, or dishonest; how counsel failed to abide by Sutrick's decisions concerning the objectives of representation; or to which reasonable requests for information counsel failed to respond. Additionally, Sutrick does not explain how any of

these alleged deficiencies prejudiced him—either with respect to his decision to enter a no-contest plea or with respect to the sentence imposed. Under these circumstances, Sutrick has not shown any arguably meritorious basis to claim that his trial counsel was constitutionally ineffective.

Next, Sutrick asserts that his plea was not knowingly, intelligently, and voluntarily entered because he did not sign the plea questionnaire and waiver of rights form and did not understand that the State was not required to cap its sentence recommendation at the recommendation in the PSI. Sutrick raised these arguments in support of his postconviction motion for plea withdrawal, and the circuit court rejected them. We have already concluded that there are no arguably meritorious grounds to challenge the court's decision in that regard. Nothing in Sutrick's response to the no-merit report convinces us otherwise.

Finally, Sutrick appears to believe that he was improperly convicted of first-degree reckless homicide because it is "impossible to say" that he had "utter disregard for human life." *See* WIS. STAT. § 940.02(1) (stating that first-degree reckless homicide is committed by a person who "recklessly causes the death of another human being under circumstances which show utter disregard for human life"). We construe this argument as a claim that the record does not contain a sufficient factual basis for Sutrick's plea to the first-degree reckless homicide charge.

Before accepting a no-contest plea, a circuit court must "[m]ake such inquiry as satisfies it that the defendant in fact committed the crime charged." WIS. STAT. § 971.08(1)(b). "Generally, the factual basis for a [no-contest] plea may be established by reference to the allegations set forth in the criminal complaint." ***State v. Sutton***, 2006 WI App 118, ¶17, 294 Wis. 2d 330, 718 N.W.2d 146. In addition, when a plea is entered pursuant to a negotiated plea

agreement, the circuit court "need not go to the same length to determine whether the facts would sustain the charge as it would where there is no negotiated plea." ***Id.***, ¶16 (citation omitted).

During the plea hearing, the circuit court expressly asked Sutrick: "Do you agree that there are enough facts in the criminal complaint to support your no[-]contest plea for first-degree reckless homicide?" Sutrick responded, "Yes, sir, Your Honor, I do." The court then asked Sutrick's trial attorney, "[D]o you agree with that as well?" Counsel responded, "Yes, Your Honor." "[A] factual basis is established when counsel stipulate on the record to facts in the criminal complaint." ***State v. Thomas***, 2000 WI 13, ¶21, 232 Wis. 2d 714, 605 N.W.2d 836.

Moreover, our review of the complaint satisfies us that it does, in fact, contain a factual basis for the "utter disregard for human life" element of the first-degree reckless homicide charge. "[T]he element of utter disregard for human life is measured objectively, on the basis of what a reasonable person in the defendant's position would have known." ***State v. Jensen***, 2000 WI 84, ¶17, 236 Wis. 2d 521, 613 N.W.2d 170. When determining whether this element has been established, a fact finder must consider the totality of the circumstances, including "what the defendant was doing; why he [or she] was doing it; how dangerous the conduct was; how obvious the danger was and whether the conduct showed any regard for human life." ***Id.***, ¶24 (citation omitted).

Here, the complaint alleged that Sutrick and the victim were staying together in a motel room. Between 4:00 and 5:00 a.m., other motel guests heard "a loud verbal argument" coming from Sutrick and the victim's room. Later that morning, a motel employee saw Sutrick "yelling down the hallway that he needed help," and Sutrick told the employee "that his girlfriend … was

unconscious in the bathtub." The employee and another motel guest lifted the victim out of the bathtub, and the guest began to perform CPR on her. The hotel employee told police that Sutrick "was absolutely no help to her after letting her into the room," that he "disappeared right after letting her into the room," and that it "seemed strange that [he] did not want to stick around and help" the victim.

The motel employee also told police that when she pulled the victim out of the bathtub, there were "many bruises" on the victim's arms and face, and the victim's eyes were "black and blue and appeared swollen." She believed that the victim had been "beaten up." Officers investigating the incident also noticed bruising on the victim's head and face. A second motel employee told police that the victim did not have bruises on her face when Sutrick and the victim checked into the motel two days before.

The victim was transported to a hospital, where emergency department staff noted intrathoratic bleeding in her chest, intracranial bleeding, and an orbital skull fracture. A trauma surgeon described the victim's injuries as "the worst amount of trauma he had ever seen on a patient." The victim was declared brain dead later that day. A medical examiner later determined that the victim's cause of death was "blunt force injury to the head and neck with evidence of manual strangulation and subdural hematoma." The medical examiner further opined that the trauma was "non-accidental" and that the victim's death was a homicide.

Inside the motel room, officers found a bath towel with blood stains underneath some of the victim's clothing. Officers also found clumps of what appeared to be the victim's hair throughout the room. They also noted damage to the handle of the bathroom door that was consistent with "significant force" being exerted on the handle "from the outside of the door."

These allegations permit an inculpatory inference that Sutrick acted with utter disregard for human life by beating the victim, causing her to sustain severe injuries that ultimately resulted in her death. "[A] factual basis for a plea exists if an inculpatory inference can be drawn from the complaint … 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. "This is the essence of what a defendant waives when he or she enters a guilty or no[-]contest plea." ***Id.***

Furthermore, while Sutrick contends that he could not have acted with utter disregard for human life because he "retrieved help for the victim" while she still had a pulse, "[a]fter-the-fact regard for human life does not negate 'utter disregard' otherwise established by the circumstances before and during the crime." *See* ***Jensen***, 236 Wis. 2d 521, ¶32. Stated differently, while a jury could have considered Sutrick's after-the-fact conduct had he chosen to go to trial, that conduct did not prevent the circuit court from concluding that the complaint established a factual basis for the "utter disregard for human life" element of the first-degree reckless homicide charge. *See* ***id.***

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

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Lucas Swank is relieved of further representation of Dennis Henry Sutrick 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