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DISTRICT II

April 30, 2025

To:

Hon. Anthony G. Milisauskas
Circuit Court Judge
Electronic Notice

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

Angela Conrad Kachelski
Electronic Notice

John Blimling
Electronic Notice

Maurice M. Hughes #540797
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2023AP2385-CRNM State of Wisconsin v. Maurice M. Hughes (L.C. #2020CF393)

Before Gundrum, P.J., Neubauer, 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).

Maurice M. Hughes appeals from a judgment convicting him of multiple crimes. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2023-24)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Hughes filed a response. Counsel then filed a supplemental no-merit report. After reviewing the Record, counsel's reports, and Hughes' response, we conclude that issues of arguable merit exist relating to Hughes' sentencing.

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

Therefore, we reject the no-merit report and dismiss the appeal without prejudice. We also extend the time for Hughes to file a postconviction motion under WIS. STAT. RULE 809.30.

Hughes was convicted following a jury trial of first-degree recklessly endangering safety by use of a dangerous weapon, endangering safety by reckless use of a firearm, first-degree reckless injury by use of a dangerous weapon, and three counts of possession of a firearm by a felon—all as a repeater. The charges stemmed from two shootings in the City of Kenosha and the subsequent discovery of a firearm in Hughes' residence.

At sentencing, Hughes maintained his innocence, and the circuit court commented on that fact by noting the GPS monitoring evidence used against Hughes at trial. The court stated:

> [Y]ou were on a GPS when all this happened. You were supposed to have this thing on 24/7. And it has to be charged. There is no period of time where you could tell these people hey, I don't have to wear this. I don't have to tell you where I am at.
>
> Well, what happened here. Both times when these shootings happened … that GPS wasn't working. It wasn't charged for some reason. It magically wasn't working.
>
> What does that say? I don't know. It sure sounds like it was done because you didn't want to be found out where you were at. I don't know, but it's pretty damaging evidence it's not working just for those two times.

As noted in Hughes' response, the circuit court's last sentence is erroneous. That is, it is inaccurate to say that Hughes' GPS monitoring device was not working "just for those two times" of the shootings. Indeed, according to one trial exhibit,[2] Hughes' GPS monitoring device "died" thirty-seven times in the two-month time period around the shootings. Thus, Hughes may

[2] *See* Exhibit D41.

be able to seek resentencing based upon the court's erroneous statement. *See* ***State v. Tiepelman***, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1 ("A defendant has a constitutionally protected due process right to be sentenced upon accurate information.").

Also at sentencing, the circuit court declined to find Hughes eligible to participate in the substance abuse program. In making this determination, the court simply noted that Hughes was statutorily ineligible "per the Presentence Report."

It is true that the writer of the Presentence Report checked a box indicating that Hughes was not statutorily eligible for the substance abuse program. However, that representation was only accurate for one of Hughes' convictions (i.e., first-degree reckless injury). *See* WIS. STAT. §§ 940.23(1)(a) and 973.01(3g). When sentencing Hughes for his other crimes, the circuit court could have found him eligible to participate in the substance abuse program.[3] Accordingly, Hughes could argue that the court erroneously exercised its discretion when it failed to consider that possibility due to its reliance on the Presentence Report. *See* ***State v. Davis***, 2001 WI 136, ¶28, 248 Wis. 2d 986, 637 N.W.2d 62 ("An erroneous exercise of discretion results when the exercise of discretion is based on an error of law.").

Given these issues, we cannot conclude that further postconviction proceedings on Hughes' behalf would be wholly frivolous. ***State v. Parent***, 2006 WI 132, ¶20, 298 Wis. 2d 63, 725 N.W.2d 915. Therefore, we reject the no-merit report and dismiss the appeal without

[3] The Assistant District Attorney tried to make this point at sentencing, explaining, "Count 4 [first-degree reckless injury] is the only 940 offense. That makes [Hughes] ineligible … but for the other Counts he is not Statutorily ineligible."

prejudice. We also extend the time for Hughes to file a postconviction motion under WIS. STAT. RULE 809.30.

Upon the foregoing reasons,

IT IS ORDERED that the WIS. STAT. RULE 809.32 no-merit report is rejected and this appeal is dismissed without prejudice.

IT IS FURTHER ORDERED that the time for Hughes to file a postconviction motion under WIS. STAT. RULE 809.30 is extended to forty-five days after the date of remittitur.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals