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DISTRICT I

August 19, 2015

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

2015AP441-CRNM State of Wisconsin v. Joevon D. Robinson (L.C. #2011CF5777)

Before Curley, P.J., Brennan and Bradley, JJ.

Joevon D. Robinson appeals a judgment convicting him of one count of felony murder, as a party to a crime, with attempted armed robbery as the predicate felony offense. Attorney Thomas J. Erickson filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Robinson

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

was informed of his right to file a response, but he has not done so. After considering the no-merit report and conducting an independent review of the record, we conclude that there are no issues of arguable merit that Robinson could raise on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether Robinson’s guilty plea was knowingly, intelligently and voluntarily entered. In order to ensure that a defendant is knowingly, intelligently and voluntarily waiving the right to trial by entering a guilty plea, the circuit court must conduct a colloquy with the defendant to ascertain that the defendant understands the elements of the crimes to which he is pleading guilty, the constitutional rights he is waiving by entering the plea, and the maximum potential penalties that could be imposed. *See* WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Although “not intended to eliminate the need for the court to make a record demonstrating the defendant’s understanding of the particular information contained therein,” the court may refer to a plea colloquy and waiver-of-rights form, which the defendant has acknowledged reviewing and understanding, as part of its inquiry, reducing “the extent and degree of the colloquy otherwise required between the trial court and the defendant.” *State v. Hoppe*, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794 (citation and quotation marks omitted).

During the plea hearing, the prosecutor explained the plea agreement on the record. The circuit court explained to Robinson that it was not bound by the negotiations between the parties or by the plea agreement. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Robinson said he understood. The court reviewed the maximum potential penalties

Robinson faced and explained the elements of the crime to Robinson. Robinson informed the court that he understood. The court reviewed the constitutional rights Robinson was waiving with him on the record. Again, Robinson informed the court that he understood. The court informed Robinson that if he was not a citizen of the United States of America, he could be deported if he pled guilty to the crime. See *State v. Douangmala*, 2002 WI 62, ¶46, 253 Wis. 2d 173, 646 N.W.2d 1.

The circuit court also ascertained that Robinson read the plea questionnaire and waiver-of-rights form, which listed the constitutional rights Robinson was waiving, the elements of the crime and the maximum penalty Robinson faced. Robinson signed the plea questionnaire, which is included in the record, indicating that he both read the form and had the form read to him by his lawyer. The court asked Robinson whether he had reviewed the criminal complaint and whether the court could use the facts alleged in the complaint as the basis for the plea. Robinson agreed, with minor amendments to some of the facts alleged. Based on the court's thorough plea colloquy with Robinson and Robinson's review of the plea questionnaire and waiver-of-rights form, there would be no arguable merit to an appellate challenge to the plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion. The court sentenced Robinson to twenty three years of imprisonment, with fifteen years of initial confinement and eight years of extended supervision. In deciding the sentence, the court emphasized the seriousness of the crime and Robinson's role in taking the life of another human being prematurely by violence. The court placed particular weight on the fact that Robinson had previously been involved in an armed robbery and knew the potential consequences of introducing a firearm into the situation. The court considered appropriate factors in deciding what length of sentence to impose and explained

its application of the various sentencing guidelines in accordance with the framework set forth in *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, there would be no arguable merit to an appellate challenge to the sentence.

The no-merit report next addresses whether there would be arguable merit to a claim that Robinson's right to a speedy trial was violated. "The trial of a defendant charged with a felony shall commence within 90 days from the date trial is demanded by any party in writing or on the record." WIS. STAT. § 971.10(2)(a). However, the circuit court may grant a continuance despite the pendency of a speedy trial request if "the ends of justice served by taking action outweigh the best interest of the public and the defendant in a speedy trial." § 971.10(3)(a). After reviewing the transcripts of the circuit court hearings, we agree with the no-merit report's analysis that

the many delays in trial were caused by the succession of attorneys representing [Robinson] who were either not prepared to try the case within the speedy trial timeframe or who were forced to withdraw from representing [Robinson] because of ethical concerns. Thus, the ends of justice were served by either allowing the attorney adequate time to prepare for trial or appointing an attorney who could represent [Robinson] ethically.

Moreover, Robinson waived his right to argue that his right to a speedy trial was violated by pleading guilty. See *State v. Asmus*, 2010 WI App 48, ¶3, 324 Wis. 2d 427, 782 N.W.2d 435 (a guilty plea waives all non-jurisdictional arguments and defenses, including constitutional claims).

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Thomas J. Erickson of further representation of Robinson.

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

IT IS FURTHER ORDERED that Attorney Thomas J. Erickson is relieved of any further representation of Robinson in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals