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DISTRICT IV

December 3, 2015

To:

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

2014AP2427-CRNM State of Wisconsin v. Gavin M. Crosby (L.C. # 2013CF300)

Before Lundsten, Higginbotham, and Blanchard, JJ.

Attorney William Schmaal, appointed counsel for Gavin Crosby, has 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). The no-merit report addresses whether there would be arguable merit to a challenge to Crosby's plea or sentencing. Crosby was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as

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

well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Crosby was charged with assault by prisoner as a repeater. Pursuant to a plea agreement, Crosby pled guilty to the charged crime, and the State recommended three years of initial confinement and one year of extended supervision, consecutive to Crosby's current sentence. The court sentenced Crosby to three years of initial confinement and one year of extended supervision, consecutive to any other sentence.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Crosby's plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire and waiver of rights form that Crosby signed, satisfied the court's mandatory duties to personally address Crosby and determine information such as Crosby's understanding of the nature of the charge and the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea. *See State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Crosby's plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Crosby's sentence. A challenge to a circuit court's exercise of its sentencing discretion must overcome our presumption that the sentence was reasonable. *State v. Ramuta*, 2003 WI App 80,

¶23, 261 Wis. 2d 784, 661 N.W.2d 483. Here, the court explained that it considered facts relevant to the standard sentencing factors and objectives, including the seriousness of the offense, Crosby's character and criminal history, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum Crosby faced and, given the facts of this case, was not so excessive or unduly harsh as to shock the conscience. *See State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. We discern no erroneous exercise of the court's sentencing discretion.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

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

Diane M. Fremgen
Clerk of Court of Appeals