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DISTRICT III

June 21, 2016

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

2015AP2568-CRNM State of Wisconsin v. Michael J. Schmidt (L.C. # 2014CF729)

Before Curley, P.J., Kessler and Brash, JJ.

Michael J. Schmidt appeals a judgment convicting him of one count of attempted burglary and one count of burglary, both as a repeater. Attorney Roberta A. Heckes 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 (1967). Schmidt was advised of his right to file a response, but he has not done so. After considering the no-merit report and conducting an

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

independent review of the record, we conclude that there are no issues of arguable merit that Schmidt 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 there would be any basis for arguing that Schmidt did not knowingly, intelligently, and voluntarily enter his no-contest plea. Before accepting a no-contest plea, the circuit court must conduct a colloquy with the defendant to ascertain that the defendant understands the elements of the crimes, 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. The colloquy is intended to ensure that the defendant is knowingly, intelligently, and voluntarily waiving the right to trial by entering the plea. *Id.* Although “not intended to eliminate the need for the court to make a record demonstrating the defendant’s understanding of the particular information,” the circuit court may refer to a plea questionnaire and waiver-of-rights form 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, Schmidt’s lawyer stated the plea agreement on the record: in exchange for Schmidt’s plea of no-contest to one count of attempted burglary and one count of burglary, the prosecutor would dismiss one count of burglary and one count of child neglect, and would recommend five years of initial incarceration and five years of extended supervision. Schmidt and the prosecutor both advised the court that the agreement as stated was accurate.

The circuit court asked Schmidt if he understood the constitutional rights he was giving up by entering a no-contest plea. Schmidt said that he did. The circuit court asked Schmidt whether he reviewed, signed, and understood the plea questionnaire and waiver-of-rights form, which also listed Schmidt's constitutional rights. Schmidt said that he had reviewed and understood the form.

The circuit court asked Schmidt whether he understood the elements of the offenses to which he was pleading no contest, which were listed on a separate sheet of paper attached to the plea questionnaire and waiver-of-rights form. Schmidt acknowledged that he understood the elements. The circuit court explained the difference between attempted burglary and burglary to Schmidt on the record. Schmidt said that he understood.

The circuit court asked Schmidt whether he read the criminal complaint and understood what it said. Schmidt acknowledged that he read and understood the complaint. Schmidt also acknowledged that the facts alleged in the criminal complaint were true. The circuit court asked Schmidt whether he had any questions about the effect of his plea, the rights he was waiving, and the maximum penalties he faced. Schmidt said that he did not have any questions. The circuit court did not explain the maximum penalties for the crimes to Schmidt on the record, but the plea questionnaire and waiver-of-rights form, which Schmidt acknowledged reading, listed the maximum penalties. Moreover, Schmidt acknowledged reading the complaint, which also listed the maximum penalties.

The circuit court ascertained that Schmidt's lawyer was satisfied that Schmidt was voluntarily and intelligently entering his plea and was satisfied that there was a sufficient factual

basis for the court to accept the plea. The circuit court also ascertained that Schmidt had prior convictions that supported the repeater enhancements.

The circuit court did not ask Schmidt whether he understood the significance of pleading no-contest, as opposed to pleading guilty, but Schmidt previously pled no-contest to crimes on multiple occasions before the same circuit court judge. Based on his prior convictions after pleading no-contest, Schmidt was aware that he would be found guilty based on his no-contest plea. Although the circuit court's plea colloquy was abbreviated, the plea questionnaire and waiver-of-rights form fleshed out the issues that the circuit court discussed with Schmidt, establishing that Schmidt knowingly, intelligently, and voluntarily entered his plea. Therefore, we conclude that there would be no arguable merit to an appellate claim that Schmidt should be allowed to withdraw his plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced Schmidt to an aggregate term of five years of initial confinement and five years of extended supervision for the crimes. The circuit court explained that its primary considerations in imposing the sentence were the need to protect the community, the need to provide an appropriate punishment, and the need to deter others from committing crimes. The circuit court acknowledged Schmidt's difficulty in overcoming his alcohol and drug addiction, but said his addiction was not an excuse for criminal behavior. The court told Schmidt that it appreciated that he said he did not want to be the kind of person who inflicted harm the way he had in committing these crimes, but said that it was up to Schmidt to take advantage of the opportunities he was being given to overcome his addiction issues so that he could be present for his child, his family, and his community, rather than incarcerated. The circuit court considered appropriate factors in deciding the length of the sentence and explained

its application of the various sentencing goals as applied to the facts of this case 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. There would be no arguable merit to an appellate challenge to the sentence.

Our independent review of the record reveals no arguable basis for reversing the judgment of conviction. Therefore, we affirm the judgment and relieve Attorney Roberta A. Heckes of further representation of Schmidt.

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 Roberta A. Heckes is relieved of any further representation of Schmidt in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals