



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

October 19, 2016

To:

Hon. Andrew T. Gonring
Circuit Court Judge
Washington County Courthouse
P.O. Box 1986
West Bend, WI 53095-1986

Theresa Russell
Clerk of Circuit Court
Washington County Courthouse
P.O. Box 1986
West Bend, WI 53095-1986

Mark Bensen
District Attorney
Washington County
P.O. Box 1986
West Bend, WI 53095-1986

Esther Cohen Lee
Hall, Burce and Olson, S.C.
759 N. Milwaukee St., Ste. 410
Milwaukee, WI 53202

Criminal Appeals Unit
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Bradley J. Schmitt, #593013
Chippewa Valley Corr. Treatment Facility
2909 E. Park Ave.
Chippewa Falls, WI 54729

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

2016AP954-CRNM State of Wisconsin v. Bradley J. Schmitt (L.C. #2014CF530)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Bradley J. Schmitt appeals from a judgment convicting him of delivery of heroin (less than three grams). Schmitt's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738 (1967). Schmitt received a copy of the report, was advised of his right to file a response, and has elected not to do so. After

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

reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. RULE 809.21.

Schmitt was convicted following a guilty plea to delivery of heroin (less than three grams). The charge stemmed from the sale of heroin to a confidential police informant in November 2014. It was one of four sales that Schmitt made to an informant in less than a month's time. Three additional counts of delivery of heroin were dismissed and read-in.

For his actions, the circuit court sentenced Schmitt to three and one-half years of initial confinement followed by three and one-half years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether Schmitt's guilty plea was knowingly, voluntarily, and intelligently entered and had a factual basis. The record shows that the circuit court engaged in a colloquy with Schmitt that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.² A signed plea questionnaire and waiver of rights form was entered into the record along with an attachment explaining the elements of the offense. The court referred to those in its colloquy. Furthermore, the court correctly determined that a factual basis existed based upon Schmitt's admissions to the allegations in the complaint. We agree with counsel that a challenge to the entry of Schmitt's guilty plea would lack arguable merit.

² There is one exception to this. The circuit court failed to provide the deportation warning required by WIS. STAT. § 971.08(1)(c). This failure does not present a potentially meritorious issue for appeal, however, as there is no indication that Schmitt's plea is likely to result in his deportation, exclusion from admission to this country, or denial of naturalization. Section 971.08(2). Indeed, at sentencing, Schmitt indicated that he was born in Wisconsin.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the court’s sentencing decision had a “‘rational and explainable basis.’” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In making its decision, the court considered the seriousness of the offense, Schmitt’s character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by the nature of the crime and read-in offenses, the sentence imposed does not “shock public sentiment and violate the judgment of reasonable people concerning what is right and proper.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Schmitt’s sentence would lack arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.³ Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Esther Cohen Lee of further representation in this matter.

Upon the foregoing reasons,

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

³ The State did not file the information within the time specified in WIS. STAT. § 971.01(2). Although this entitled Schmitt to have the action dismissed without prejudice, he waived this right at the plea hearing, expressing a desire to go forward with the case. Given this waiver and Schmitt’s subsequent guilty plea, we are satisfied that the late filing of the information does not present an issue of arguable merit.

IT IS FURTHER ORDERED that Attorney Esther Cohen Lee is relieved of further representation of Schmitt in this matter.

Diane M. Fremgen
Clerk of Court of Appeals