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December 28, 2016

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

2016AP1841-CRNM State of Wisconsin v. Emmanuel A. Currie (L.C. #2015CF795)
2016AP1842-CRNM State of Wisconsin v. Emmanuel A. Currie (L.C. #2015CF913)

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

In these consolidated cases, Emmanuel Currie appeals from judgments convicting him of criminal damage to property and disorderly conduct, both as an act of domestic abuse, and felony bail jumping. His appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Currie was advised of his right to file a response but has not done so. After reviewing the no-merit report and the

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

record, we conclude there are no issues with arguable merit for appeal and therefore summarily affirm the judgments. *See* WIS. STAT. RULE 809.21.

On two separate occasions, Currie and JJN, his then girlfriend, violated mutual no-contact orders each had against the other. Both episodes turned violent; in each case Currie broke JJN's cell phone. Currie entered no-contest pleas to criminal damage to property and disorderly conduct, both misdemeanors, and to felony bail jumping. Charges of felony intimidation of a victim with property damage as an act of domestic abuse, felony intimidation of a victim with use or attempted use of force, felony bail jumping, misdemeanor battery, and misdemeanor criminal damage to property were dismissed and read in. The court ordered thirty months' probation, with various conditions, and withheld sentence. This appeal followed.

The no-merit report first addresses the potential issue of whether Currie's no-contest pleas were freely, voluntarily, and knowingly entered. We agree that there is no arguable basis for Currie to challenge his pleas. He completed a plea questionnaire and waiver-of-rights form and the elements of the offenses were spelled out on separate sheets attached thereto. In addition, the circuit court conducted a generally thorough plea colloquy to ascertain Currie's understanding of the charges against him, the penalties he faced, the constitutional rights he was waiving by entering pleas, and that the court was not bound by any sentencing recommendations. *See* WIS. STAT. § 971.08; ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.

Counsel does not address the court's failure during the plea colloquy to give Currie the deportation warning WIS. STAT. § 971.08(1)(c) mandates. *See* ***State v. Douangmala***, 2002 WI 62, ¶21, 253 Wis. 2d 173, 646 N.W.2d 1 (explaining that § 971.08(1)(c) "not only commands what the court must personally say to the defendant, but the language is bracketed by quotation

marks, an unusual and significant legislative signal that the statute should be followed to the letter") (citation omitted).

That failure is not grounds for relief, however, unless the defendant can show that his or her plea is likely to result in deportation, exclusion from admission to this country, or denial of naturalization. WIS. STAT. § 971.08(2). There is no indication in the record that Currie could make such a showing. The PSI indicates that he was born and raised in the Chicago, Illinois area, a representation Currie neither disputed at the sentencing hearing nor by availing himself of the opportunity to respond to the no-merit report. This court concludes, therefore, that there is no merit to a motion for plea withdrawal based on the failure to give the deportation warning.

The no-merit report next addresses, applying the familiar sentencing-factor analysis, whether the court erroneously exercised its discretion in sentencing Currie. *See, e.g.*, ***State v. Paske***, 163 Wis. 2d 52, 62, 471 N.W. 2d 55 (1991). The court withheld sentence, however, and ordered probation with conditions. *See* WIS. STAT. § 973.09(1)(a).[2] Probation generally is not considered a sentence but is an alternative to sentencing. ***State v. Horn***, 226 Wis. 2d 637, 647, 594 N.W.2d 772 (1999). We note, however, that the court fully explained its reasons for withholding sentence and for the length of the term of probation.

[2] WISCONSIN STAT. § 973.09(1)(a) provides in relevant part:

> if a person is convicted of a crime, the court, by order, may withhold sentence … and … place the person on probation to the department [of corrections] for a stated period, stating in the order the reasons therefor. The court may impose any conditions which appear to be reasonable and appropriate.

A circuit court has broad discretion in imposing conditions of probation; they need only "appear to be reasonable and appropriate." WIS. STAT. § 973.09(1)(a). The conditions imposed here included such things as assessment of AODA and counseling needs and full compliance with any recommended treatment, absolute sobriety, random drug and urine testing, and no contact with JNN. Considering the nature of the charges against Currie, these conditions "appear to be reasonable and appropriate" and without any basis for a meritorious challenge.

Our review of the record discloses no further potential issues for appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Daniel Goggin II is relieved of further representing Currie in this matter.

Diane M. Fremgen
Clerk of Court of Appeals