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DISTRICT IV

April 25, 2019

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

2018AP807-CRNM State of Wisconsin v. Mario F. Brown, Jr. (L.C. # 2017CF1)

Before Lundsten, P.J., Blanchard and Kloppenburg, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Attorney Andrew R. Hinkel, appointed counsel for Mario F. Brown, Jr., has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18)[1] and ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses whether

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

there would be arguable merit to a challenge to Brown's plea or sentencing. Brown was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel that there are no issues of arguable merit. We affirm.

In January 2017, Brown was charged with first-degree intentional homicide as a party to a crime and by use of a dangerous weapon, as a repeater. The criminal information added a charge of attempted first-degree intentional homicide as a party to a crime and by use of a dangerous weapon, as a repeater. Pursuant to a plea agreement, Brown pled no contest to an amended charge of second-degree reckless homicide and the State moved to dismiss the attempted homicide charge and recommended five years of initial confinement. The court sentenced Brown to ten years of initial confinement and ten years of extended supervision.

The no-merit report addresses whether there would be arguable merit to a challenge to Brown's plea. A postsentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as ineffective assistance of counsel, or a plea that was not voluntary. ***State v. Krieger***, 163 Wis. 2d 241, 250-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Brown signed, satisfied the court's mandatory duties to personally address Brown and determine information such as Brown'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.[2] *See* ***State v. Hoppe***, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. The criminal complaint provided a factual basis for the plea. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Brown's plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Brown's sentence. We agree with counsel that this issue lacks arguable merit. Our review of a sentence determination begins "with the presumption that the [circuit] court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the circuit court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Brown's character and criminal history, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. There would be no arguable merit to a claim that the sentence was unduly harsh or excessive given the facts of this case. *See* ***State v. Stenzel***, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people

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[2] No-merit counsel notes that the court failed to inform Brown that it was not bound by the terms of the plea agreement, as required under ***State v. Hampton***, 2004 WI 107, ¶32, 274 Wis. 2d 379, 683 N.W.2d 14. However, counsel does not believe that he could make the representations required to obtain relief based on that omission. Accepting that representation, it would be wholly frivolous to pursue plea withdrawal on that basis. *See* ***id.***, ¶46 (postconviction motion for plea withdrawal must allege that the defendant did not understand the information that the circuit court should have provided at the plea hearing).

concerning what is right and proper under the circumstances" (citation omitted)). We discern no basis to challenge the sentence imposed by the court.

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 is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Andrew R. Hinkel is relieved of any further representation of Mario F. Brown, Jr. in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals