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DISTRICT IV

November 19, 2026

To:

Hon. Michael P. Screnock
Circuit Court Judge
Electronic Notice

Carrie Wastlick
Clerk of Circuit Court
Sauk County Courthouse
Electronic Notice

John Blimling
Electronic Notice

Nicholas Grant Smith
Electronic Notice

Wendell D. Gist 339622
Dodge Correctional Institution
P.O. Box 700
Waupun, WI 53963

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

2024AP2253-CRNM State of Wisconsin v. Wendell D. Gist (L.C. # 2023CF16)

Before Graham, P.J., Kloppenburg, and Ziegler, 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 Lena Archer, appointed counsel for appellant Wendell Gist, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2023-24).[1] Attorney Nicholas Smith has substituted as no-merit counsel. Gist was provided a copy of the no-merit report, but has not filed a response. On our review of the no-merit report, as well as our independent review of the entire record as mandated by ***Anders v. California***, 386 U.S. 738, 744

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

(1967), we agree with counsel that there are no issues of arguable merit. We summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The State charged Gist with five counts of first-degree sexual assault and one count of stalking, causing bodily harm. Pursuant to a plea agreement, Gist pled no contest to stalking, causing bodily harm, and the circuit court dismissed the first-degree sexual assault counts outright. The court sentenced Gist to the maximum sentence of seven and one-half years of initial confinement and five years of extended supervision, and also imposed a $5,000 fine plus costs.

The no-merit report addresses whether there would be arguable merit to a challenge to the validity of Gist's plea. We agree with counsel's assessment that a challenge to Gist's plea would be wholly frivolous. 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 that Gist signed, satisfied the court's mandatory duties to personally address Gist and determine information such as Gist's understanding of the nature of the charge, the range of punishments he faced, and the constitutional rights he waived by entering a plea.[2] *See* ***State v. Hoppe***, 2009 WI

[2] The no-merit report notes that the circuit court did not personally inform Gist that it was not bound by the plea agreement, as required by ***State v. Hampton***, 2002 WI App 293, ¶9, 259 Wis. 2d 455, 655 N.W.2d 131. However, the no-merit report concludes that any argument that Gist should be permitted to seek plea withdrawal under ***Hampton*** lacks arguable merit because counsel cannot allege that Gist did not understand that the court was not bound by the plea agreement. *See* ***id.***, ¶17. This court also notes that the circuit court followed the plea agreement. On that basis, as well, we determine that this issue lacks arguable merit. *See* ***State v. Johnson***, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 441 (no manifest injustice justifying plea withdrawal where the court failed to advise the defendant that it was not bound by the plea agreement but the court in fact followed the plea agreement).

41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. A valid guilty plea constitutes a waiver of all nonjurisdictional defects and defenses. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

The no-merit report also addresses whether there would be arguable merit to a challenge to Gist'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). The record establishes that Gist was afforded the opportunity to address the court prior to sentencing. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Gist's character and rehabilitative needs, 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. The court awarded Gist 258 days of sentence credit, on counsel's stipulation. We discern no non-frivolous basis to challenge the court's exercise of its sentencing discretion.

Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders***, 386 U.S. at 744.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Nicholas Smith is relieved of any further representation of Wendell Gist in this matter pursuant to WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals