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June 7, 2017

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

2016AP539-CRNM State of Wisconsin v. Robert Lee Sellen (L.C. # 2015CF78)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Robert Lee Sellen appeals from a judgment of conviction entered upon his guilty plea to manufacturing methamphetamine as a party to the crime. Sellen's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),¹ and *Anders v. California*, 386 U.S. 738 (1967). Sellen received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the no-merit report and our independent

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Pursuant to a plea agreement, Sellen pled guilty to manufacturing three grams or less of methamphetamine, as a party to the crime, contrary to WIS. STAT. § 961.41(1)(e)1, and WIS. STAT. § 939.05. The State moved to dismiss and read in a count of possessing drug paraphernalia with the primary intent to manufacture methamphetamine in violation of WIS. STAT. § 961.573(3)(a) and (b), as a party to the crime. As part of the agreement, the parties jointly recommended a ten-year bifurcated prison sentence, with five years of initial confinement followed by five years of extended supervision. Sellen also agreed to pay the restitution requested by the owners of the motel in which he manufactured the methamphetamine. At sentencing, the court imposed a bifurcated sentence totaling twelve and one-half years, with seven and one-half years of initial confinement followed by five years of extended supervision. This no-merit appeal followed.

The no-merit report addresses the potential issues of whether Sellen's plea was freely, voluntarily, and knowingly entered, and if the sentence imposed was illegal or the result of an erroneous exercise of discretion. Our review of the record persuades us that no issue of arguable merit arises from either point.

The circuit court engaged in an appropriate plea colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1), *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Additionally, the circuit court properly relied upon Sellen's signed plea questionnaire to establish his knowledge and understanding of his plea. *See State v. Hoppe*,

2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794; *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). No issue of arguable merit arises from the plea-taking procedures in this case.

In fashioning the sentence, the court considered the seriousness of the offenses, the defendant'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. The circuit court considered the offense extremely serious and dangerous. The court considered the need to punish Sellen and stated that community protection was its primary sentencing objective. The court determined that rehabilitation in a confined setting and incapacitation were necessary to protect the public. The circuit court's sentence was a demonstrably proper exercise of discretion. Further, we cannot conclude that the sentence imposed is so excessive or unusual as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). In imposing the maximum sentence, the circuit court considered that another count was dismissed and read in, as well as the State's assertion that because Sellen agreed to pay restitution, it decided not to charge additional counts. *See State v. Kaczynski*, 2002 WI App 276, ¶13, 258 Wis. 2d 653, 654 N.W.2d 300 (where defendant received the benefit of a charging concession, the sentencing court's imposition of the maximum penalty did not shock "the community's sense of justice."). These and other considerations, including the court's sentencing remarks and Sellen's prior criminal record, support the sentencing court's exercise of discretion.

Our review of the record discloses no other potential issues for appeal.² Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to further represent Sellen in this appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Timothy T. O’Connell is relieved from further representing Robert Lee Sellen in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals

² Sellen’s guilty plea forfeited the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886.