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DISTRICT II

June 7, 2017

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

2016AP720-CRNM State of Wisconsin v. Latriell D. Thurman (L.C. # 2012CF840)

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

Latriell D. Thurman appeals from a judgment of conviction for being party to the crime of first-degree reckless homicide by use of a dangerous weapon, and an order denying his postconviction motion. His 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). Thurman received a

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

copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent 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.

Thurman and another man caused the death of Jeremiah Brook. Brook was a known marijuana dealer and was shot during a robbery by the two men on July 23, 2012. Thurman was charged as a party to the crime of first-degree reckless homicide by use of a dangerous weapon and armed robbery. Thurman was also charged with attempted armed robbery after he tried to rob a man at gunpoint just a couple of hours after the homicide. Thurman entered a guilty plea to the homicide charge and the other charges, including a misdemeanor charge in another case, were dismissed as read-ins at sentencing. Thurman was sentenced to thirty-seven years' initial confinement and thirteen years' extended supervision.

Thurman's postconviction motion sought plea withdrawal alleging that the plea was not voluntarily, knowingly or intelligently entered because Thurman had not been advised by either the circuit court or trial counsel that an attorney could discover defenses or mitigating circumstances not apparent to a layman and that he was giving up any defenses he had by pleading guilty. He also alleged that he had not read the plea questionnaire before signing it, his trial counsel did not read it to him, and the circuit court did not inquire whether he had read it. A *Machner*² hearing was held and the postconviction motion was denied. The circuit court found

² A *Machner* hearing addresses a defendant's ineffective assistance of counsel claim. *See State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

that counsel had gone over the plea questionnaire with Thurman. It also concluded that the plea colloquy demonstrated that the plea was voluntarily, knowingly, and intelligently entered.

The no-merit report addresses the potential issues of whether Thurman's plea was freely, voluntarily and knowingly entered, whether the circuit court properly denied the postconviction motion for plea withdrawal, and whether the sentence was the result of an erroneous exercise of discretion or, unduly harsh or excessive. Although the no-merit report fails to recognize that during the plea colloquy the deportation warning required by WIS. STAT. § 971.08(1)(c), was not given, there is no suggestion on the record that Thurman would be subject to deportation. The presentence investigation report lists his birthplace as Wisconsin. The failure to give the warning is not a ground for relief. See *State v. Douangmala*, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1. In sentencing Thurman, the sentencing court mentioned the high risk potential reflected by the COMPAS³ evaluation. The mere mention of the three areas in which Thurman was assessed to have a high risk was not a determinative factor in the sentence imposed. Thus, the court utilized the COMPAS evaluation consistent with our supreme court's decision in *State v. Loomis*, 2016 WI 68, ¶99, 371 Wis. 2d 235, 881 N.W.2d 749. As to all other aspects of potential appellate issues, this court is satisfied that the no-merit report properly analyzes them as without merit, and this court will not discuss them further.

³ “‘COMPAS’ stands for ‘Correctional Offender Management Profiling for Alternative Sanctions.’” *State v. Loomis*, 2016 WI 68, ¶4 n.10, 371 Wis. 2d 235, 881 N.W.2d 749.

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

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Paul G. Bonneson is relieved from further representing Latriell D. Thurman in this appeal. *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