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April 23, 2020

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

2018AP1551-CRNM State of Wisconsin v. James J. Murry (L.C. # 2016CF891)

Before Fitzpatrick, P.J., Kloppenburg and Graham, 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).

James J. Murry appeals from a judgment entered upon his guilty plea to first-degree reckless homicide. Murry's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Murry received a copy

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

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 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.

The State filed a complaint charging Murry with one count of first-degree reckless homicide as a repeater, and one count of delivering three grams or less of heroin, as a second or subsequent drug offense. As part of a negotiated agreement, Murry pled guilty to first-degree reckless homicide, a Class C felony. The State successfully moved to dismiss and read in the repeater enhancer and the second count, and agreed to cap its sentencing recommendation at four years of initial confinement followed by six years of extended supervision. A presentence investigation report (PSI) was prepared. At sentencing, the circuit court imposed a nine-year bifurcated sentence, with three years of initial confinement followed by six years of extended supervision.

The no-merit report discusses whether Murry's guilty plea was knowing, intelligent, and voluntary. The circuit court's plea-taking duties are set forth in WIS. STAT. § 971.08(1), and summarized in *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the court engaged in a colloquy that, together with the plea questionnaire signed by Murry,²

² As discussed in the no-merit report, Murry's signed plea questionnaire is not in the appellate record. Appellate counsel asserts that he contacted the circuit court clerk, but the plea form could not be located. We agree with appellate counsel that it is clear from the plea-hearing transcript as well as the minutes from that hearing that Murry completed and signed a plea questionnaire, that he reviewed the plea questionnaire with trial counsel, and that the questionnaire was filed in and relied on by the plea-taking court. Illustrative are the following exchanges reflected in the plea-hearing transcript:

(continued)

satisfied the court’s mandatory duties. See *State v. Hoppe*, 2009 WI 41, ¶¶ 18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. We agree with appellate counsel’s analysis and conclusion that no issue of arguable merit arises from the entry of Murry’s guilty plea.

Appellate counsel’s no-merit report also addresses whether the circuit court properly exercised its sentencing discretion. The record reveals that the court’s sentencing decision had a “rational and explainable basis.” See *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (quoted source omitted). In fashioning its sentence, the circuit court considered the gravity of the offense, Murry’s character and history, and the need to protect the public. See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court found that Murry was “genuinely remorseful[,]” and had accepted responsibility by entering his guilty plea.

THE COURT: I have in my hand a plea questionnaire/waiver of rights form, and attached to it is Jury Instruction 1021, first-degree reckless homicide. On the second page is today’s date. Is this your signature?

MR. MURRY: Yes.

THE COURT: How old are you today, Mr. Murry?

MR. MURRY: Twenty-nine.

THE COURT: And this indicates 11 years of schooling.

MR. MURRY: Yes.

....

THE COURT: Along with your right to a jury trial, you are waiving, or giving up, these other constitutional rights. There are seven of them on the front of the form. There’s a checkmark in a box next to each one. I believe your attorney has put the checkmark in the box next to them. Did you go through these one at a time with [trial counsel]?

MR. MURRY: Yes, I did.

On this record, the absence of the physical plea form does not give rise to a potential issue of arguable merit.

It identified as its primary objectives protection of the public, and general and specific deterrence. The court considered appropriate factors, did not consider improper factors, and reached a rational result. Further, under the circumstances of this case, it cannot reasonably be argued that Murry's nine-year bifurcated sentence, which is well below the maximum of forty years, is so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with appellate counsel that a challenge to Murry's sentence would lack arguable merit.

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 further represent Murry on appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Michael D. Rosenberg is relieved from further representing James J. Murry in this appeal. 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