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May 19, 2020

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

2019AP1797-CRNM State of Wisconsin v. Malik M. Terrell (L.C. # 2018CF2342)

Before Brash, P.J., Dugan and Donald, 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).

Malik M. Terrell appeals from a judgment of conviction for first-degree intentional homicide, for which he was sentenced to life in prison without the possibility of extended supervision. His 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). Terrell filed a response to

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

the no-merit report and appellate counsel then filed a supplemental no-merit report. *See* RULE 809.32(1)(e), (f). Upon consideration of these submissions and an independent review of the record as mandated by *Anders*, 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.

Terrell pled guilty to killing a fifteen-year-old boy that Terrell and his two younger brothers suspected to be involved in the theft of a video gaming system. Terrell was twenty-two years old at the time he brought the boy to his residence. Terrell beat the boy with a hammer, stabbed him in the neck several times, moved the boy's corpse to an abandoned house, and set fire to the corpse. Terrell then fled to Chicago.

The no-merit report addresses the potential issues of whether Terrell's plea was freely, voluntarily, and knowingly entered and whether the denial of the possibility of extended supervision was the result of an erroneous exercise of discretion. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and accordingly this court will not discuss them further.

Terrell's response complains about comments the sentencing court made about the brutality of the crime and the court's perception that the crime was aggravated by the attempt to burn the corpse. As appellate counsel's supplemental no-merit report observes, the sentencing court's comments were permissible under the law. Terrell's complaint does not suggest any potential of arguable merit with regard to the sentence.

Terrell claims that the plea bargain was tainted by threats to the prosecutor by the victim's family resulting in the prosecutor's unwillingness to offer Terrell a deal with a lower

charge. A defendant has no right to a plea bargain to a lower charge. *See Weatherford v. Bursey*, 429 U.S. 545, 561 (1977) (there is no constitutional right to plea bargain). Here the consideration from the prosecution was the agreement to stand silent as to if and when Terrell should be allowed to seek supervised release. Although Terrell characterizes this as no bargain at all because it was unlikely to come to pass that the sentencing court would afford him extended supervision,² it does not render his plea involuntary. Terrell acknowledged during the plea colloquy that the decision as to the possibility of extended supervision was the court's decision alone. As appellate counsel's supplemental no-merit reiterates, the sentencing court provided adequate reasons for rejecting Terrell's possible release to extended supervision. Further, the manifest injustice standard for plea withdrawal cannot be met by Terrell's "disappointment in the punishment [he] received[;]" the manifest injustice standard "serves as a deterrent to impede defendants from testing the waters for possible punishments." *State v. Manke*, 230 Wis. 2d 421, 426, 602 N.W.2d 139 (Ct. App. 1999).

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 Terrell further in this appeal.

Upon the foregoing reasons,

² Terrell asserts that he was "played" by the prosecutor and his trial attorney to accept the agreement which essentially offered him no benefit at all. However, the "failure to receive sentence concessions contemplated by a plea agreement is [not] a basis for withdrawing a guilty plea on the grounds of manifest injustice." *Melby v. State*, 70 Wis. 2d 368, 385, 234 N.W.2d 634 (1975). Similarly, "[c]ounsel's incorrect prediction concerning defendant's sentence ... is not enough to support a claim of ineffective assistance of counsel." *State v. Provo*, 2004 WI App 97, ¶18, 272 Wis. 2d 837, 681 N.W.2d 272 (citation omitted; ellipses in *Provo*).

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

IT IS FURTHER ORDERED that Attorney Angela Conrad Kachelski is relieved from further representing Malik M. Terrell in this appeal. *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