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DISTRICT I

July 28, 2020

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

2019AP2317-CRNM State of Wisconsin v. Marquis Dontrell Shaw
(L.C. # 2017CF1361)

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

Marquis Dontrell Shaw appeals a judgment convicting him of one count of possession of heroin with intent to deliver and one count of possession of methamphetamines with intent to deliver. He also appeals an order denying his postconviction motion. Attorney Leon W. Todd III was appointed to represent Shaw for postconviction and appellate proceedings. He filed a no-

merit report pursuant to WIS. STAT. RULE 809.32 (2017-18),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Shaw was notified that a no-merit report was filed and was advised of his right to file a response, but he has not responded. After considering the report and conducting an independent review of the record, as mandated by *Anders*, we conclude that there are no issues of arguable merit that could be raised on appeal. Therefore, we summarily affirm. See WIS. STAT. RULE 809.21.

The no-merit report first addresses whether there would be arguable merit to a claim that Shaw should be allowed to withdraw his guilty pleas because he did not knowingly, intelligently, and voluntarily enter the same. The circuit court conducted a thorough colloquy with Shaw that complied with WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). Prior to the plea hearing, Shaw discussed information pertinent to entering his pleas with his trial counsel, and he reviewed a plea questionnaire and waiver of rights form with his trial counsel, subsequently signing and filing the same. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (stating that the circuit court may rely on a plea questionnaire and waiver of rights form in assessing the defendant's knowledge about the rights he or she is waiving). Shaw acknowledged that there was a factual basis to convict him of the crimes. Therefore, there would be no arguable merit to an appellate challenge to the pleas.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court erroneously exercised its sentencing discretion when it sentenced Shaw to nine years of initial confinement and five years of extended supervision on each count, to be served concurrently to each other but consecutively to any other sentence Shaw was serving. The record

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

establishes that the circuit court considered the general objectives of sentencing and applied the sentencing factors to the facts of this case, reaching a reasoned and reasonable result. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (stating that the circuit court must identify the factors it considered and explain how those factors fit the sentencing objectives and influenced its sentencing decision). There would be no arguable merit to a challenge to the sentence.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court erred in denying Shaw’s postconviction motion for sentence modification. Shaw moved for sentence modification based on his post-sentencing diagnosis of post-traumatic stress disorder (PTSD). Shaw contends this diagnosis is a new factor that entitled him to sentence modification. A “new factor” is ““a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because ... it was unknowingly overlooked by all of the parties.”” *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted).

The circuit court ruled that, even assuming that Shaw’s PTSD constitutes a new factor, the circuit would not modify Shaw’s sentence based on his prior conduct and the need to protect the community. The circuit court explained:

The defendant has already had the benefit of an early release after participating in the Challenge Incarceration Program, one of the most intensive rehabilitative treatment programs offered in the prison system.... Yet, the moment he got out, he not only immediately resumed selling (what he thought was) MDMA, he escalated to selling heroin. While the defendant’s conduct may have been fueled by addiction or mental health issues, the community does not have to suffer the consequences. The defendant has been afforded many chances, and the community is entitled to a break from his criminality. The court finds that the full nine years of initial

confinement imposed [is] the minimum amount of time necessary to achieve its sentencing goals and to protect the community.

The circuit court's decision shows that it properly exercised its discretion in denying his postconviction motion. Therefore, we conclude that there would be no arguable merit to a challenge to the order denying the postconviction motion.

Our review of the record discloses no other potential issues for appeal. Accordingly, we accept the no-merit report, affirm the conviction and order denying postconviction relief, and discharge appellate counsel of the obligation to further represent Shaw.

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

IT IS FURTHER ORDERED that Attorney Leon W. Todd III is relieved from further representing Marquis Dontrell Shaw. *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