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DISTRICT IV

April 24, 2025

To:

Hon. Faun Marie Phillipson
Circuit Court Judge
Electronic Notice

Melanie Leutenegger
Clerk of Circuit Court
Green County Courthouse
Electronic Notice

John Blimling
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Laura M. Force
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Thomas Lee Carothers 302899
Prairie Du Chien Correctional Inst.
P.O. Box 9900
Prairie du Chien, WI 53821

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

2023AP1210-CRNM State of Wisconsin v. Thomas Lee Carothers (L.C. # 2020CF112)

Before Graham, Nashold, and Taylor, 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).

Attorney Laura Force, appointed counsel for Thomas Lee Carothers, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2023-24)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Carothers was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit

¹ All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Carothers was charged with operating a motor vehicle while intoxicated (OWI) as a fifth or sixth offense; operating with a prohibited blood alcohol concentration (BAC) as a fifth or sixth offense; OWI, causing injury, as a second or subsequent offense; and BAC, causing injury, as a second or subsequent offense. Pursuant to a plea agreement, Carothers pled guilty to OWI as a fifth offense and OWI, causing injury, as a second or subsequent offense, and the remaining counts were dismissed and read in for sentencing purposes. The parties jointly recommended eight years of imprisonment, consisting of three years of initial confinement and five years of extended supervision, and a fine of \$650 plus court costs on each count. The parties also stipulated to an amount of restitution. The circuit court adopted the parties' joint sentencing recommendation as to the length of imprisonment and the stipulated amount of restitution, and it imposed a fine of \$600 plus costs as to each count. Additionally, the court imposed three years of license revocation and an ignition interlock device requirement.

The no-merit report addresses whether there would be arguable merit to a challenge to the validity of Carothers' pleas. We agree with counsel's assessment that a challenge to Carothers' pleas would be wholly frivolous. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Carothers signed, satisfied the court's mandatory duties to personally address Carothers and determine information such as Carothers' understanding of the nature of the charges and the range of punishments he faced, the constitutional rights he waived by entering

his pleas, and the direct consequences of the pleas. *See State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. A valid guilty plea constitutes a waiver of all nonjurisdictional defects and defenses. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

The no-merit report also addresses whether there would be arguable merit to a challenge to Carothers’ sentence. We agree with counsel that this issue lacks arguable merit. Our review of a sentence determination begins “with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of.” *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, Carothers was afforded the opportunity to personally address the circuit court before the sentence was imposed. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offenses, Carothers’ rehabilitative needs, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum Carothers faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive “only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances” (citation omitted)). The court granted Carothers one day of sentence credit, on counsel’s stipulation, and made Carothers eligible for the Earned Release Program. We agree with counsel’s assessment that there is no merit to any challenge to the circuit court’s sentencing determinations.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Laura Force is relieved of any further representation of Thomas Lee Carothers in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals