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May 21, 2020

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

2019AP356-CRNM State of Wisconsin v. Adam T. Schick (L.C. # 2016CF49)

Before Fitzpatrick, P.J., Kloppenburg and Nashold, 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 Angela Kachelski, appointed counsel for Adam Schick, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Schick was sent a copy of the report and filed a

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

response, and Attorney Kachelski filed a supplemental no-merit report. Upon consideration of the report, the response, the supplemental report, and an independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

Schick was initially charged with first-degree sexual assault of a child under sixteen, by use or threat of force or violence. The complaint included allegations that Schick used force or violence in several ways, including by cuffing the victim's hands, forcing her mouth open, and prying her knees apart. The parties entered into a plea agreement under which Schick pled guilty to a reduced charge that did not require the use or threat of force or violence. The circuit court sentenced Schick to a 19-year prison term, consisting of 12 years of initial confinement and 7 years of extended supervision, consecutive to any other sentence.

The no-merit report addresses whether Schick's plea was knowing, intelligent, and voluntary. We agree with counsel that there is no arguable merit to this issue. The plea colloquy sufficiently complied with the requirements of WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, relating to the nature of the charges, the rights Schick was waiving, and other matters. The record shows no other arguable ground for plea withdrawal.

In his response to the no-merit report, Schick argues that trial counsel misled him, and that he should be allowed to withdraw his plea because of counsel's misleading advice. Schick's legal theory for why this advice justifies plea withdrawal is not clear. However, construing Schick's response liberally in view of the entire record, it appears that Schick claims that trial counsel was ineffective by misleading Schick into believing that his plea to the reduced charge would prevent the circuit court from considering at sentencing any allegation that Schick used

force or violence. Schick claims that, contrary to what trial counsel told him would happen, the presentence investigation report contained a description of Schick's offense as originally alleged in the complaint.

A claim for ineffective assistance of counsel may justify plea withdrawal. However, to show ineffective assistance of counsel, a defendant must establish both that counsel's performance was deficient and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To establish prejudice, "the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

Here, even if we assume that trial counsel performed deficiently by misleading Schick in the way that Schick alleges, there is no arguable merit to claiming that Schick was prejudiced because nothing in the circuit court's sentencing decision indicates that the court sentenced Schick based on any allegations relating to the use of force or violence. To the contrary, the court acknowledged in its decision that Schick disputed those allegations, and the court made clear that Schick's sentence was based on the nature of the crime to which Schick pled and other aggravating factors.

The no-merit report next addresses whether the circuit court erroneously exercised its sentencing discretion. We agree with counsel that there is no arguable merit to this issue. Schick's sentence was within the maximum allowed, the court discussed the required sentencing factors along with other relevant factors, and the court did not consider any inappropriate factors. See *State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. The record shows no other arguable basis for Schick to challenge his sentence.

Our review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Angela Kachelski is relieved of any further representation of Adam Schick in this matter. *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