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DISTRICT IV

May 22, 2025

To:

Hon. Julie Genovese
Circuit Court Judge
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

John Blimling
Electronic Notice

Thomas J. Erickson
Electronic Notice

Perion R. Carreon 713956
Green Bay Correctional Institution
P.O. Box 19033
Green Bay, WI 54307-9033

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

2023AP2015-CRNM State of Wisconsin v. Perion R. Carreon (L.C. # 2020CF2055)

Before Blanchard, Graham, 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 Thomas Erickson, appointed counsel for Perion Carreon, 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). Carreon 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 report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Carreon was charged with first-degree intentional homicide and attempted first-degree intentional homicide, both as a party to a crime, and four counts of felony bail jumping, all as a repeater. Pursuant to a plea agreement, Carreon pled guilty to an amended charge of first-degree reckless homicide and the charged offense of attempted first-degree intentional homicide, both as a party to a crime and without the repeater enhancer. The bail jumping charges were dismissed and read in for sentencing purposes, and the State agreed to cap its sentencing recommendation at thirty-five years of initial confinement. The circuit court sentenced Carreon to thirty years of initial confinement and twenty-five years of extended supervision.

The no-merit report addresses whether there would be arguable merit to a challenge to the validity of Carreon's plea. We agree with counsel's assessment that a challenge to Carreon's plea 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 Carreon signed, satisfied the court's mandatory duties to personally address Carreon and determine information such as Carreon's understanding of the nature of the charges and the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea. *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

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

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 Carreon's 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, Carreon was afforded the opportunity to personally address the 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, Carreon's 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 Carreon 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 Carreon 768 days of sentence credit, on counsel's stipulation. We agree with counsel's assessment that there would be no arguable merit to any challenge to the sentence imposed by the circuit court.

In a supplemental no-merit report, counsel concludes that there would be no arguable merit to a challenge to the circuit court's restitution award.[2] First, the supplemental no-merit report concludes that there would be no arguable merit to a challenge to the court's authority to issue a restitution award even though the award was made more than the sixty days after sentencing. *See* WIS. STAT. § 973.20(13)(c)2. (when restitution is addressed but not resolved at sentencing, the circuit court may "[a]djourn the sentencing proceeding for up to 60 days pending resolution of the amount of restitution by the court"); ***State v. Ziegler***, 2005 WI App 69, ¶14, 280 Wis. 2d 860, 695 N.W.2d 895 (the court may impose restitution outside the statutory timeframe upon considering whether there was a valid reason for the delay and any prejudice resulting to the defendant). We determine that, because the court did not address restitution at all at sentencing, there would be no arguable merit to a challenge to the court's authority to issue a restitution award beyond the statutory period for resolving the amount of restitution. *See* ***State v. Borst***, 181 Wis. 2d 118, 122, 510 N.W.2d 739 (Ct. App. 1993) (because § 973.20(1r) imposes a mandatory duty on a sentencing court to address restitution, original sentence that failed to address restitution at all "was 'illegal' in the sense that it was incomplete" and therefore the circuit court "properly amended its sentence to order restitution"). Second, the supplemental no-merit report states that Carreon is satisfied with the amount of restitution determined by the court.[3] Because

[2] The restitution order was entered after the no-merit notice of appeal and no-merit report were filed. Pursuant to a prior order of this court, no-merit counsel has filed an additional notice of appeal from the restitution order so that this court has jurisdiction to review the circuit court's restitution award in this no-merit appeal.

[3] The State requested $40,000 in restitution to the Crime Victim Compensation Fund. The circuit court awarded $13,000.

Carreon does not want to challenge the amount of restitution awarded by the court, we do not address that issue further.

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 and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Thomas Erickson is relieved of any further representation of Perion Carreon 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