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DISTRICT IV

November 12, 2020

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

2019AP2176-CRNM State of Wisconsin v. Charlie Williams (L.C. # 2017CF2215)

Before Fitzpatrick, P.J., Kloppenburg, and Graham, 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 Mark Schoenfeldt, appointed counsel for Charlie Williams, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18)[1] and

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

Anders v. California, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to Williams's plea or sentencing or the circuit court's order denying Williams's postconviction motion. Williams was provided 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.

Williams was charged with first-degree sexual assault of a child. Pursuant to a plea agreement, Williams pled guilty and the State moved to dismiss a separate pending case against Williams and limited its sentencing recommendation in this case to four years of initial confinement. The circuit court sentenced Williams to six years of initial confinement and six years of extended supervision. Williams filed a postconviction motion arguing that the circuit court erroneously exercised its sentencing discretion by considering irrelevant factors. The circuit court denied the motion.

The no-merit report addresses whether there would be arguable merit to a challenge to Williams's plea. It states that no-merit counsel identified potential grounds to seek plea withdrawal, but that Williams informed counsel that he did not wish to seek to withdraw his plea on any ground. Williams has not filed a response contradicting counsel's assertion that Williams does not wish to seek plea withdrawal. Because Williams does not wish to pursue a motion for plea withdrawal, whether or not such a motion would have arguable merit, we will not address the validity of his plea. 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.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Williams'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." ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). A defendant must show "some unreasonable or unjustifiable basis in the record for the sentence complained of." ***Id.*** Here, the circuit court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Williams's character, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum Williams 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" (quoted source omitted)).

The no-merit report also concludes that there would be no arguable merit to a challenge to the circuit court order denying Williams's postconviction motion challenging his sentence. Williams argued in his postconviction motion that the circuit court erroneously exercised its sentencing discretion by considering irrelevant information. *See* ***State v. Alexander***, 2015 WI 6, ¶17, 360 Wis. 2d 292, 858 N.W.2d 662 ("A circuit court erroneously exercises its sentencing discretion when it actually relies on clearly irrelevant or improper factors." (quoted source omitted)). In his postconviction motion, Williams cited the circuit court's sentencing remarks in which the court noted Williams's disadvantaged upbringing but stated that other people who live

in neighborhoods with "bullet casings" on the streets "link arms, join together, and try and drive out the bad apples." Williams also cited the circuit court's comments about having observed a sentencing in Milwaukee in which defense counsel argued that the defendant's bad acts were attributable to where the defendant had grown up. The sentencing judge stated that the identified neighborhood was also the neighborhood where the judge had grown up, and that people from that neighborhood had gone on to achieve great things. Williams argued that those sentencing comments demonstrated that the circuit court considered irrelevant information as to the behavior of other people in imposing Williams's sentence.

The circuit court denied the postconviction motion, explaining that the court had referenced the ability of others to rise above disadvantaged backgrounds to indicate to Williams that he was capable of rehabilitation. We agree with the assessment in the no-merit report that a challenge to the circuit court's decision would lack arguable merit. *See* ***id.*** ("A defendant bears the burden of proving, by clear and convincing evidence, that the sentencing court actually relied on irrelevant or improper factors."); ***State v. Fuerst***, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994) (a circuit court has an opportunity to clarify its sentencing statements when challenged by postconviction motion).

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 Mark Schoenfeldt is relieved of any further representation of Charlie Williams 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