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DISTRICT IV

January 25, 2024

To:

Hon. Troy D. Cross
Circuit Court Judge
Electronic Notice

Julie Kayartz
Clerk of Circuit Court
Columbia County Courthouse
Electronic Notice

Frances Philomene Colbert
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Michael J. Jensen
1727 N. Salem Road
La Crosse, WI 54603

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

2022AP259-CRNM State of Wisconsin v. Michael J. Jensen (L.C. # 2020CF88)

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).

Michael Jensen appeals from a judgment of conviction for possession of methamphetamines. Attorney Frances Reynolds Colbert has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22).¹ The no-merit report addresses whether there would be arguable merit to a challenge to Jensen's plea or sentencing. Jensen was advised of his right to respond to the no-merit report, but he has not filed a response. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

738, 744 (1967), we agree that there are no issues of arguable merit. We summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The State charged Jensen with causing injury by operation of a vehicle while intoxicated; causing injury by operation of a vehicle with a detectable amount of a restricted controlled substance in the blood; and possessing methamphetamines. Pursuant to a plea agreement, Jensen pled no contest to possessing methamphetamines; the operating while intoxicated count was dismissed and read in for sentencing purposes; and the operating with a detectable amount of a controlled substance count was amended to a civil forfeiture. Additionally, under the plea agreement, the parties jointly recommended that the court withhold sentence and impose twenty-four months of probation, with conditions of probation to include that Jensen complete an Alcohol and Other Drug Assessment (AODA), comply with treatment recommendations, and pay court costs. The court followed the joint recommendation, but additionally imposed fifteen days of jail time as a condition of probation. The court awarded Jensen seven days of sentence credit, on counsels' stipulation.

The no-merit report addresses whether there would be arguable merit to a challenge to the validity of Jensen's plea. We agree with counsel's assessment that a challenge to Jensen'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, Jensen appeared via Zoom for the plea hearing and waived his right to personally appear, in accordance with *State v. Soto*, 2012 WI 93, ¶¶42-44, 343 Wis. 2d 43, 817 N.W.2d 848. The circuit court conducted a plea colloquy that, together with the plea questionnaire that Jensen signed, satisfied the court's mandatory duties to personally address Jensen and determine

information such as Jensen’s understanding of the nature of the charge 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 or no-contest plea constitutes a waiver of all nonjurisdictional defects and defenses. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

The no-merit report also addresses whether there is arguable merit to a challenge to the circuit court’s exercise of its sentencing discretion. 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). The record establishes that Jensen was afforded the opportunity to address the court prior to sentencing. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Jensen’s rehabilitative needs, 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. We discern no non-frivolous basis to challenge the court’s exercise of its sentencing discretion.

Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Frances Reynolds Colbert is relieved of any further representation of Michael Jensen in this matter pursuant to 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