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DISTRICT II

May 1, 2024

To:

Hon. Scott C. Woldt
Circuit Court Judge
Electronic Notice

Tara Berry
Clerk of Circuit Court
Winnebago County Courthouse
Electronic Notice

Erica L. Bauer
Electronic Notice

Jennifer L. Vandermeuse
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Joshua T. Immel #522227
Racine Correctional Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2022AP1623-CRNM State of Wisconsin v. Joshua T. Immel (L.C. #2017CF597)

Before Gundrum, P.J., Neubauer and Lazar, 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).

Joshua T. Immel appeals from a judgment convicting him of several crimes. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Immel filed multiple responses. After reviewing the record, counsel's report, and Immel's responses, we conclude there are no issues with arguable

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

merit for appeal. Therefore, we summarily affirm the judgment and remand with directions.²
See WIS. STAT. RULE 809.21.

In the early morning hours of September 17, 2017, Immel committed a series of crimes on or near the University of Wisconsin-Oshkosh campus. He was charged with kidnapping, attempted second-degree sexual assault/use of force, operating a motor vehicle without owner's consent, substantial battery, criminal trespass, fourth-degree sexual assault, and two counts of false imprisonment—all as a repeater.

On the eve of his scheduled trial, Immel entered no contest pleas to the charges against him. However, he was later able to withdraw the pleas on the ground that they were not entered knowingly, voluntarily, and intelligently. That is because Immel's trial counsel had failed to communicate an earlier plea offer to him. Accordingly, the pleas were withdrawn, and Immel was appointed new counsel.

Immel subsequently reached a more favorable plea deal with the State. He agreed to plead no contest to the charges of attempted second-degree sexual assault/use of force, fourth-degree sexual assault, and false imprisonment—all without the repeater enhancer. In return, the State agreed to dismiss and read-in the remaining charges. The parties also agreed to make a joint recommendation at sentencing.

² There is a clerical error in the judgment of conviction regarding count two. It indicates that Immel was convicted of second-degree sexual assault/use of force. This should instead indicate that Immel was convicted of attempted second-degree sexual assault/use of force. We remand the matter to the circuit court so that the judgment can be amended to reflect that.

Ultimately, the circuit court imposed an aggregate sentence of eleven years of initial confinement and ten years of extended supervision, which was consistent with the parties' joint recommendation. The court also imposed multiple fines, which it later vacated. This no-merit appeal follows.

The no-merit report addresses the propriety of the second plea and sentence and whether grounds exist to challenge either one. This court is satisfied that the no-merit report correctly analyzes the issues it raises as without merit, and we will not discuss them further.

As noted, Immel filed multiple responses to counsel's no-merit report. The responses are, at times, difficult to decipher. In them, Immel appears to question the applicability of the sex offender registry requirement to his case. He also appears to complain that (1) his post-arrest probable cause determination was untimely; (2) eyewitness identification³ of him was unreliable/suggestive; and (3) some of the dismissed and read-in charges lacked a factual basis and may have contributed to a longer sentence.

We are not persuaded that Immel's responses present an issue of arguable merit. To begin, Immel was convicted of a qualifying sex offense under Wisconsin's sex offender registration statute. *See* WIS. STAT. § 301.45(1d)(b). Moreover, his pleas forfeited the right to raise the nonjurisdictional defects and defenses that he cites in his response. *See State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886; *see also State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. Finally, there is no required finding of a factual basis for dismissed and read-in offenses, and, in any event, Immel cannot challenge the length of

³ Four eyewitnesses implicated Immel in the crimes.

a sentence that he requested. *See State v. Magnuson*, 220 Wis. 2d 468, 471-72, 583 N.W.2d 843 (Ct. App. 1998).

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Immel further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21 and remanded with directions.

IT IS FURTHER ORDERED that Attorney Erica L. Bauer is relieved of further representation of Joshua T. Immel in this appeal. *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