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DISTRICT II

October 2, 2024

To:

Hon. James K. Muehlbauer
Circuit Court Judge
Electronic Notice

Sarah Adjemian
Clerk of Circuit Court
Washington County Courthouse
Electronic Notice

Thomas Brady Aquino
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Brian Robert Leiske, #210767
Fox Lake Correctional Institution
W10237 Lake Emily Road
Fox Lake, WI 53933

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

2024AP482-CRNM State of Wisconsin v. Brian Robert Leiske (L.C. #2022CF13)

Before Gundrum, P.J., Grogan 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).

Brian Robert Leiske appeals from a judgment convicting him of two counts of delivering methamphetamine and one count of maintaining a drug trafficking place following his pleas to those charges. 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). Counsel provided Leiske with a copy of the report, and both counsel and this court advised him of his right to file a response. Leiske has not responded. After reviewing the Record and counsel's report, we conclude there

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

are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Leiske was convicted following his guilty pleas to delivering methamphetamine and maintaining a drug trafficking place. As part of a plea agreement with the State, seventeen additional charges were dismissed and read in.

For Leiske's conduct, the circuit court imposed ten years of initial confinement and five years of extended supervision, concurrent, on each of the methamphetamine convictions. The court imposed and stayed a sentence while placing Leiske on three years of probation on his conviction for maintaining a drug trafficking place. This no-merit appeal follows.

The no-merit report addresses: (1) whether Leiske's pleas were entered knowingly, voluntarily, and intelligently; and (2) whether the circuit court properly exercised its discretion at sentencing.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. *State v. Bangert*, 131 Wis. 2d 246, 272-276, 389 N.W.2d 12 (1986); *State v. Krieger*, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Pursuant to a plea agreement, Leiske entered guilty pleas to three of the twenty charges against him. The circuit court conducted a standard plea colloquy, inquiring into Leiske's ability

to understand the proceedings and the voluntariness of his plea decision, and further exploring his understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. *See State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and *Bangert*, 131 Wis. 2d at 266-72.

Leiske accepted the Criminal Complaint as a factual basis for the plea. He also indicated that he reviewed the Complaint, and the facts set forth therein were substantially true and correct. Nothing in our independent review of the Record would support a claim that trial counsel rendered ineffective assistance, nor give rise to a manifest injustice.

There also is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. In imposing sentence, the court considered the seriousness of the offenses, Leiske's character, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶40-44, 270 Wis. 2d 535, 678 N.W.2d 197. Leiske also had the opportunity to address the court directly, and did so prior to the court's imposition of sentence.

Upon our independent review of the Record, we see no other arguable basis for reversing the judgments of conviction. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32. Therefore,

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

IT IS FURTHER ORDERED that Attorney Thomas Brady Aquino is relieved from further representing Brian Robert Leiske in these appeals. *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