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DISTRICT IV

October 10, 2024

To:

Hon. Ellen K. Berz
Circuit Court Judge
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Faun M. Moses
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Timothy L. Coleman
Best Western West Towne Suites
650 Grand Canyon Dr.
Madison, WI 53719

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

2022AP2030-CRNM State v. Timothy L. Coleman (L.C. # 2020CF947)

Before Kloppenburg, P.J., 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).

Attorney Brent A. Simerson, appointed counsel for appellant Timothy Coleman, has filed a no-merit report seeking to withdraw as appellate counsel.¹ *See* WIS. STAT. RULE 809.32 (2021-22).² The no-merit report addresses whether there would be arguable merit to a challenge to Coleman's plea or sentencing. Coleman has filed a response to the no-merit report. Upon our

¹ Attorney Faun M. Moses subsequently substituted as counsel for Attorney Simerson.

² All references to the Wisconsin Statutes are to the 2021-22 version.

review of the no-merit report and response, as well as our independent review of the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we agree with counsel that there are no issues of arguable merit. We summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The State charged Coleman with robbery with use of force, misdemeanor battery, and two counts of felony bail jumping. Pursuant to a plea agreement, Coleman pled guilty to robbery with use of force and misdemeanor battery, and the bail-jumping counts were dismissed. In addition, the parties jointly recommended that the circuit court withhold sentence and impose three years of probation, with five months of conditional jail time to be served consecutively to jail time imposed in another case. The court followed the joint sentencing recommendation with respect to the three years of probation and imposed a lesser amount of four months of consecutive conditional jail time. The court also awarded Coleman twenty-eight days of sentence credit, on the parties' stipulation.

The no-merit report addresses whether there would be arguable merit to a challenge to the validity of Coleman's plea. We agree with counsel's assessment that a challenge to Coleman'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 Coleman signed, satisfied the court's mandatory duties to personally address Coleman and determine information such as Coleman'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 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 Coleman’s sentence. We agree with counsel that this issue lacks arguable merit. Because Coleman received a sentencing disposition that he affirmatively approved, he is barred from challenging that disposition on appeal. See *State v. Scherreiks*, 153 Wis. 2d 510, 517-18, 451 N.W.2d 759 (Ct. App. 1989). We discern no other basis to challenge the sentencing decision of the circuit court.

Coleman has filed a response asserting that his name is “Timothy Coleman,” not “Timothy L. Coleman.” He asserts: “This case has the wrong name and I have been wrongfully convicted.” In support, Coleman has submitted a document that appears to be a “Grievance Response” from the prison confirming that Coleman’s Department of Transportation records identify him as “Timothy Coleman.” However, nothing before this court would support a nonfrivolous argument that Coleman did not commit the charged offenses or that he was wrongfully identified or convicted. Coleman’s assertion that his name should not include the middle initial “L” does not provide a nonfrivolous ground to challenge his conviction or sentence.

Coleman also asserts: “My plea bargain was changed along with my sentence” and “I never would’ve agreed to the plea bargain if I knew it would be changed.” However, at the plea and sentencing hearing, Coleman and his counsel both confirmed the plea agreement and joint sentencing recommendation as stated on the record. Coleman does not explain what he believes

changed in his plea agreement at the plea and sentencing hearing, and nothing before this court would support a nonfrivolous argument that the State did not follow the plea agreement.³ Accordingly, we discern no arguable merit to any claim based on Coleman’s assertion that his plea agreement was “changed.”

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 Faun M. Moses is relieved of any further representation of Timothy Coleman 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

³ As the circuit court informed Coleman at the plea colloquy, the circuit court was not bound by the parties’ joint sentencing recommendation. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. In any event, the court stayed within the sentencing recommendation of the parties.