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DISTRICT II

July 31, 2013

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

2013AP5-CRNM

State of Wisconsin v. Michael C. Alexander (L.C. #2012CF340)

Before Brown, C.J., Reilly and Gundrum, JJ.

Michael C. Alexander appeals from a judgment convicting him of forgery. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Alexander received a copy of the report and was notified of his right to file a response but did not do so. Upon consideration of the no-merit report and our independent review of the record as mandated by *Anders*, we conclude that the judgment may be

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21. We affirm the judgment and relieve Attorney Timothy L. Baldwin of further representing Alexander in this matter.

While he was on extended supervision (ES), Alexander and six others were involved in a forged-check-cashing scheme netting almost \$23,000. Alexander pled guilty to one count of forgery; a second was dismissed and read in for sentencing. He was sentenced to eighteen months' initial confinement and thirty-six months' ES, concurrent with the sentence imposed upon revocation of his ES, and was ordered to pay restitution for his portion, which he stipulated was \$3,421.37. Postconviction, Alexander moved for and was granted additional sentence credit. This no-merit appeal followed.

Appellate counsel advises this court that Alexander does not wish to seek withdrawal of his guilty plea. Accordingly, we address the other issues the no-merit report raises: whether the circuit court erroneously exercised its sentencing discretion and whether Alexander received effective assistance of trial counsel.

On appeal, our review of the sentence is limited to whether the circuit court erroneously exercised its discretion. *State v. Larsen*, 141 Wis. 2d 412, 426, 415 N.W.2d 535 (Ct. App. 1987). The primary sentencing factors are the gravity of the offense, the character of the offender and the need for public protection. *Id.* at 427. The weight given to each sentencing factor is within the circuit court's discretion. *Cunningham v. State*, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977).

The circuit court considered the gravity of the offense. It commented that the offense was aggravated because it was committed while on ES for another “very serious felony matter.” The court also considered Alexander’s character, noting that, while he had an extensive record and engaged in the check-kiting scheme for quick money without regard to those it injured, he also accepted responsibility from the outset. The court considered the need for public protection by imposing a prison term and ES and ordering that Alexander pay restitution. Alexander’s sentence, well within that available under the statute, is not so excessive and unusual or so disproportionate to his offense “as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with appellate counsel’s conclusion that pursuing any challenge to the sentence would lack arguable merit.

The no-merit report also considers whether there would be any arguable merit to a claim of ineffective assistance of trial counsel. Review of such a claim is limited without a *Machner* hearing. See *State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979). We agree with counsel that nothing in the record suggests an arguable basis for such a claim.

Upon our independent review of the record, we conclude that there are no other meritorious issues and that any further appellate proceedings would lack arguable merit.

For the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Timothy L. Baldwin is relieved of further representing Alexander in this matter.

Diane M. Fremgen
Clerk of Court of Appeals