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**DISTRICT IV**

September 24, 2013

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

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2012AP1365-CRNM      State of Wisconsin v. Tommie N. Lacy (L.C. # 2010CF226)

Before Lundsten, Higginbotham and Kloppenburg, JJ.

Attorney Steven Grunder, appointed counsel for Tommie Lacy, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12)<sup>1</sup> and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to Lacy's plea or sentencing. Lacy was provided a copy of the report, and has filed two responses. Upon independently reviewing the entire record, as

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

well as the no-merit report and responses, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Lacy was charged with three counts of second-degree sexual assault and two counts of kidnapping. Pursuant to a plea agreement, Lacy pled no contest to three counts of second-degree sexual assault and one count of kidnapping, and the other kidnapping count was dismissed. The court sentenced Lacy to forty years of initial confinement and twenty-five years of extended supervision.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Lacy's plea. 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 satisfied the court's mandatory duties to personally address Lacy and determine information such as Lacy's understanding of the nature of the charges 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, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Lacy's plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Lacy's sentence. A challenge to a circuit court's exercise of its sentencing discretion must overcome our presumption that the sentence was reasonable. *See State v. Ramuta*, 2003 WI App 80, ¶23, 261 Wis. 2d 784, 661 N.W.2d 483. Here, the court explained that it considered the facts

relevant to the standard sentencing factors and objectives, including the gravity of the offense, Lacy's character and criminal history, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence imposed was within the applicable penalty range. *See* WIS. STAT. §§ 940.225(2)(a); 940.31(1)(a); 939.50(3)(c); 973.01(2)(b)3. and (d)2. (all 2009-10 stats.) The sentence was well within the maximum Lacy faced, and therefore was not so excessive or unduly harsh as to shock the conscience. *See State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. Additionally, the court granted Lacy 258 days of sentence credit.<sup>2</sup> We discern no erroneous exercise of the circuit court's sentencing discretion.

Lacy argues in his no-merit responses that a sentence of forty years of initial confinement is excessive in this case, and points out that other people who have committed the same crimes have received lesser sentences. He disputes the assessment by the author of his presentence investigation report that Lacy does not appreciate the seriousness of his offense. Lacy also disputes that he poses a danger to the community, pointing out that he does not have any prior similar offenses.

Lacy states that he was highly intoxicated on the night of the offense and does not remember anything that happened, and states he believes someone slipped something in his drink at the bar that night. He also states that he has not seen any DNA results from the investigation

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<sup>2</sup> On counsel's stipulation, the court originally awarded Lacy 239 days of sentence credit. Lacy, by appointed postconviction counsel, moved the circuit court for nineteen additional days of sentence credit. The circuit court granted the motion.

in this case. He states that he entered a plea only because he was shocked and terrified by the allegations against him.

Lacy also states his belief that the State was attempting to charge him with hate crimes. He asserts that he believes he was treated unfairly in this case because he is African-American, and states that the author of his presentence investigation report informed him that he would have had a better chance in this case if his victim had not been Caucasian. He asserts his belief that, at the sentencing hearing, the prosecutor made false statements about other charges against Lacy.

Finally, Lacy asserts that his trial counsel did not try to help him at all. He asserts that counsel refused to return his calls on the false assertion that Lacy's mother left disrespectful messages on counsel's voice mail.

As to the sentence Lacy received, as we have explained above, we have no basis to disturb the circuit court's exercise of its sentencing discretion. While the sentence was substantial, the circuit court sufficiently explained that it determined a lengthy sentence was necessary based on the aggravated nature of the offenses. There would be no arguable merit to an argument that Lacy's sentence should be reduced based on other defendants receiving lesser sentences following convictions for the same crimes. See *Ocanas v. State*, 70 Wis. 2d 179, 186-87, 233 N.W.2d 457 (1975). As to information presented at the sentencing hearing, our review of the record indicates that Lacy personally addressed the court and stated that he understood the victim was traumatized and that what he did was horrible. Additionally, defense counsel argued that Lacy had no similar prior offenses. Thus, Lacy at sentencing presented his arguments to the

court as to his appreciation of the seriousness of the offense and his criminal history, and we discern no arguable merit to any appellate issues based on the same assertions.

Next, we discern no arguable merit to any appellate claims based on Lacy's assertion that he does not remember committing the crimes, that he did not see the DNA evidence against him, or that he entered his plea because he was shocked and terrified as to the charges. Lacy pled no contest to the charges in this case, and defense counsel agreed the criminal complaint established a factual basis for the plea. The fact that Lacy was shocked and terrified by the charges against him does not affect the validity of Lacy's plea. Additionally, there is no requirement that Lacy specifically remember committing the crimes, and Lacy offers no support for his belief that he may have been drugged at the bar. To the contrary, Lacy asserts that he drank alcohol and smoked marijuana to the point that he does not remember his actions. We note that Lacy's claim that he did not remember committing the crimes due to his high level of intoxication was also presented to the court at sentencing.

We also discern no arguable merit to any claims based on statements made by the prosecutor at sentencing or on Lacy's assertions that he was treated unfairly due to the fact that he is African-American and his victim was Caucasian or that his counsel was ineffective. Our review of the record does not support any of those claims, and Lacy does not provide any details or supporting material that would provide a basis for any arguably meritorious claims on those grounds.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Steven Grunder is relieved of any further representation of Tommie Lacy in this matter. *See* WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen  
Clerk of Court of Appeals*