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DISTRICT IV

September 24, 2013

To:

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

2012AP884-CRNM State of Wisconsin v. Arrie Wilson (L.C. # 2011CF1627)

Before Higginbotham, Sherman and Kloppenburg, JJ.

Attorney Jefren Olsen, appointed counsel for Arrie Wilson, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12)[1] 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 Wilson's plea or sentencing. Wilson was provided a copy of the report, but has not provided a response. Upon independently reviewing the entire record, as well

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

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

Wilson pled guilty to one count of first-degree reckless injury. The court sentenced Wilson to nine years of initial confinement and five years of extended supervision, consecutive to another sentence Wilson received following revocation of his probation.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Wilson'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 Wilson and determine Wilson's ability to understand the proceedings, Wilson's understanding of the nature of the charges and the range of punishments he faced, and that no one had threatened or promised anything to Wilson to obtain his plea.[2] *See* ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; *see also* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Additionally, counsel informs us that, to the extent any mandatory information was not provided at the plea colloquy, counsel is unaware of any information that would support an allegation that Wilson did

[2] By order dated August 29, 2013, we noted that the circuit court failed to personally advise Wilson of the deportation consequences of his plea, contrary to WIS. STAT. § 971.08(1)(c). We stated that there may be an arguable basis for plea withdrawal if Wilson could show that his plea is likely to result in his "deportation, exclusion from admission to this country or denial of naturalization." *See* WIS. STAT. § 971.08(2); *see also* ***State v. Douangmala***, 2002 WI 62, 253 Wis. 2d 173, 646 N.W.2d 1. We directed counsel to review that issue and consult with Wilson. Counsel then informed us that Wilson is a United States citizen. Based on the information provided by counsel, we determine that this issue lacks arguable merit for appeal.

not in fact understand that missing information. *See* ***State v. Bangert***, 131 Wis. 2d 246, 274, 389 N.W.2d 12 (1986). Wilson has not filed a response challenging that assessment. Our review of the record and no-merit report reveals no other basis to challenge Wilson's plea. Accordingly, we agree with counsel's assessment that this issue lacks arguable merit.

The no-merit report also addresses whether there would be arguable merit to a challenge to Wilson's sentence. A challenge to a circuit court's exercise of its sentencing discretion must overcome our presumption that the sentence was reasonable. ***State v. Ramuta***, 2003 WI App 80, ¶23, 261 Wis. 2d 784, 661 N.W.2d 483. Here, the court considered the facts relevant to the standard sentencing factors and objectives, including the seriousness of the offense, Wilson'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 was within the applicable penalty range. *See* WIS. STAT. §§ 940.23(1)(a); 939.50(3)(d); 973.01(2)(b)4. The sentence was well within the maximum Wilson 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. We discern no erroneous exercise of the court's sentencing discretion.

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 Jefren Olsen is relieved of any further representation of Wilson in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals