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DISTRICT I/II

October 30, 2013

To:

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

2013AP340-CRNM State of Wisconsin v. Craig Edward Schmidt (L.C. #2011CF6093)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Craig Edward Schmidt appeals from a judgment convicting him of possession of a controlled substance (heroin). Schmidt also appeals from an order denying his motion for postconviction relief. Schmidt's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Schmidt filed a response. Counsel then filed a supplemental no-merit report. After reviewing the record,

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

counsel's reports, and Schmidt's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment and order and remand with directions.² WIS. STAT. RULE 809.21.

The no-merit report addresses the following appellate issues: (1) whether Schmidt's guilty plea was knowingly, intelligently, and voluntarily entered; (2) whether the circuit court erroneously exercised its discretion at sentencing; and (3) whether Schmidt was afforded effective assistance of trial counsel.³

With respect to the entry of the guilty plea, the record shows that the circuit court engaged in a colloquy with Schmidt that satisfied the applicable requirements of WIS. STAT. § 971.08(1)(a) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In addition, a signed plea questionnaire and waiver of rights form was entered into the record. We agree with counsel that any challenge to the entry of Schmidt's guilty plea would lack arguable merit.

With respect to the sentence imposed, the record reveals that the circuit court's decision to impose a sentence of two years of imprisonment had a "rational and explainable basis." *State*

² The judgment of conviction indicates that the DNA surcharge was imposed. Although this is true, the circuit court told Schmidt at sentencing that he would not have to pay the surcharge if he had already provided a DNA sample in one of his prior cases. We remand the matter to the circuit court so that the judgment can be amended to reflect this.

³ The no-merit report also addresses (1) whether the complaint was sufficient; (2) whether it was issued in a timely fashion; and (3) whether the initial appearance was timely held. Schmidt waived such issues by pleading guilty. See *State v. Aniton*, 183 Wis. 2d 125, 129, 515 N.W.2d 302 (Ct. App. 1994) ("A guilty plea, made knowingly and voluntarily, waives all nonjurisdictional defects and defenses, including alleged violations of constitutional rights prior to the plea.") Accordingly, we do not discuss them further.

v. Gallion, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. Under the circumstances of the case, which were aggravated by Schmidt’s prior record, the court’s decision does not “shock public sentiment and violate the judgment of reasonable people concerning what is right and proper.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Accordingly, we agree with counsel that a challenge to the circuit court’s decision at sentencing would lack arguable merit.

Finally, with respect to whether Schmidt was afforded effective assistance of trial counsel, there is nothing in the record to suggest that Schmidt’s counsel was ineffective. Consequently, we conclude that the no-merit report properly analyzes this issue as without merit, and we will not discuss it further.

As noted, Schmidt filed a response to counsel’s no-merit report. In it, he appears to be challenging the circuit court’s bindover decision on the ground that a police officer allegedly perjured himself at the preliminary hearing.⁴ Again, the problem with this issue is that Schmidt waived it by pleading guilty. *See State v. Aniton*, 183 Wis. 2d 125, 129, 515 N.W.2d 302 (Ct. App. 1994). Accordingly, we conclude that no arguable merit could arise from it.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney J. Dennis Thornton of further representation in this matter.

⁴ According to Schmidt, there was a discrepancy in the police officer’s testimony at the January 4, 2012 preliminary hearing and a February 14, 2012 revocation hearing in a different case. Schmidt subsequently pled guilty on March 29, 2012.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21 and remanded with directions.

IT IS FURTHER ORDERED that Attorney J. Dennis Thornton is relieved of further representation of Schmidt in this matter.

Diane M. Fremgen
Clerk of Court of Appeals