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DISTRICT II

January 29, 2014

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

2013AP2050-CRNM State of Wisconsin v. Christopher J. Smith (L.C. #2012CF2)

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

Christopher J. Smith appeals from a judgment of conviction for armed robbery. 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), and a supplemental no-merit report and supporting affidavit. Smith received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the reports and an independent

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

review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Smith was charged with four crimes—armed robbery, kidnapping, false imprisonment, and felon in possession of a firearm—stemming from the robbery of a cab driver. He moved to suppress evidence seized from an apartment on the ground that there was false information in the affidavit in support of the search warrant. The motion was denied. Smith entered a no contest plea to the armed burglary charge in exchange for dismissal of the remaining counts as read ins at sentencing and a cap on the State's sentencing recommendation at twelve years' initial confinement, twelve years' extended supervision. Smith was sentenced to ten years' initial confinement and eight years' extended supervision.

The no-merit report addresses the potential issues of whether denial of the motion to suppress evidence was proper, whether Smith's plea was freely, voluntarily and knowingly entered, and whether the sentence was the result of an erroneous exercise of discretion. The supplemental no-merit report addresses whether there is any arguable merit to a motion to withdraw Smith's plea because during the plea colloquy the circuit court did not address Smith

regarding the impact of the read-in offenses.[2] This court is satisfied that the reports properly analyze the issues raised as without merit, and this court will not discuss them further.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the reports, affirms the conviction and discharges appellate counsel of the obligation to represent Smith further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Timothy O'Connell is relieved from further representing Christopher J. Smith in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

[2] This court's December 5, 2013 order required a supplemental no-merit report regarding the potential deficiency in the plea colloquy with respect to advisements about the read-in offenses. *See* ***State v. Straszkowski***, 2008 WI 65, ¶¶5, 99, 310 Wis. 2d 259, 750 N.W.2d 835 (the circuit court should inform a defendant of the effects of read-in charges). Our order also questioned whether the advisements outlined in ***Straszkowski*** are part of the circuit court's duties during a plea colloquy. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶19, 23, 317 Wis. 2d 161, 765 N.W.2d 794 (claim that trial court failed to notify the defendant that the read-in offenses could be considered at sentencing targeted the court's mandatory plea colloquy duties); ***State v. Lackershire***, 2007 WI 74, ¶28 n.8, 301 Wis. 2d 418, 734 N.W.2d 23 (the supreme court declined to adopt the court of appeals' characterization of read ins as "collateral consequences" and expressly declined to address a circuit court's obligation to explain the nature of read-in offenses). The supplemental no-merit report and counsel's affidavit set forth that Smith cannot claim he did not know or understand the omitted information, if indeed certain advisements were required. Therefore, a challenge to the plea lacks merit. *See* ***State v. Brown***, 2006 WI 100, ¶62, 293 Wis. 2d 594, 716 N.W.2d 906 (a motion to withdraw a plea is only meritorious if the defendant can allege that he did not know or understand that aspect of his plea that is related to a deficiency in the plea colloquy).