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DISTRICT IV

February 4, 2014

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

2012AP1843-CRNM State of Wisconsin v. Casey T. Thompson (L.C. # 2011CF170)

Before Blanchard, P.J., Higginbotham and Sherman, JJ.

Attorney Donna Hintze, appointed counsel for Casey Thompson, 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 any appellate issues based on: (1) the circuit court order denying Thompson's motion to suppress; (2) Thompson's no-contest plea to possession with intent to

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

deliver a controlled substance; or (3) the court's imposition of a withheld sentence and two years of probation, with ninety days of conditional jail time and a $300 fine, plus costs. Thompson was provided a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Thompson was charged with two counts of possession with intent to distribute a controlled substance following a police search of a vehicle Thompson was driving. Thompson moved to suppress evidence of the controlled substances on grounds police lacked probable cause to arrest Thompson or search the vehicle. The circuit court denied the motion after an evidentiary hearing. Thompson then pled no-contest to one count of possession with intent to deliver a controlled substance and the other count was dismissed and read-in, pursuant to a plea agreement. The court sentenced Thompson to two years of probation, sentence withheld, with ninety days of conditional jail time and a $300 fine.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the circuit court's decision on Thompson's suppression motion. We agree with counsel that this issue lacks arguable merit.

At the suppression hearing, Wood County Sherriff's Department Deputy Robert Beathard testified to the following. Beathard pulled Thompson over for speeding, and upon making contact with Thompson smelled a strong odor of unburnt marijuana in the car. There were two occupants of the vehicle. Beathard had Thompson exit the vehicle, and Thompson consented to a search of his person. During that search, Beathard smelled burnt marijuana on Thompson's clothing. Beathard then placed Thompson in the back of Beathard's squad car because they were

on a busy highway, and he believed it was necessary for everyone's safety. Beathard searched the car Thompson had been driving, and discovered controlled substances in the trunk. Beathard then placed Thompson under arrest.

The circuit court found that police had probable cause to search the vehicle and to arrest Thompson based on Beathard's testimony. We agree with counsel that there would be no arguable merit to a challenge to the circuit court's decision. *See* ***State v. Secrist***, 224 Wis. 2d 201, 210-18, 589 N.W.2d 387 (1999) (holding that the odor of marijuana emanating from a vehicle establishes probable cause to search the vehicle, and establishes probable cause to arrest if the odor can be linked to a specific person).

Next, the no-merit addresses the validity of Thompson'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 Thompson and determine information such as Thompson'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 Thompson's plea would lack arguable merit.

Finally, the no-merit report addresses whether there would be arguable merit to a challenge to Thompson's sentence. Pursuant to the plea agreement, Thompson and the State jointly recommended two years of probation, with ninety days of conditional jail time. The State

argued for a $500 fine, and Thompson argued for a fine of $200 to $300. The court imposed ninety days of conditional jail time and a $300 fine. Because Thompson affirmatively approved the sentence the circuit court imposed, Thompson may not challenge the sentence on appeal. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). 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 Hintze is relieved of any further representation of Thompson in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals