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DISTRICT IV

February 17, 2014

To:

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

2013AP399-CRNM State of Wisconsin v. Donovan S. Padley (L.C. #2011CF240)

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

Attorney Tonya Turchik, appointed counsel for Donovan Padley, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2011-12).¹ Counsel provided Padley with a copy of the report, and both counsel and this court advised him of his right to file a response. Padley has not responded. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). After our independent

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

review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

Padley pled no contest to one count of operating while intoxicated, as a fifth or sixth offense. The court withheld sentence and placed Padley on probation for three years, with one year of jail time as a condition of probation.

The no-merit report addresses whether Padley's trial counsel was ineffective by allowing Padley to waive the preliminary hearing. There is no merit to this issue, as framed, because as far as the record shows, the decision to waive the hearing was made by Padley. Furthermore, the record shows no reason to believe that Padley was prejudiced by the lack of a preliminary hearing. If the arresting officer were to testify consistently with the facts described in the complaint, the legal standard for probable cause at a preliminary hearing would be established. The record gives no reason to believe the officer would not have testified consistently with the complaint.

The no-merit report addresses whether Padley's trial counsel was ineffective because he allowed Padley to plead no contest. There is no merit to this issue, as framed, because as far as the record shows, the decision to plead no contest was made by Padley. The record gives no reason to believe counsel was ineffective in any manner that led to Padley's decision.

The no-merit report does not address whether Padley's plea was entered knowingly, voluntarily, and intelligently. However, the plea colloquy sufficiently complied with the requirements of *State v. Bangert*, 131 Wis. 2d 246, 255-73, 389 N.W.2d 12 (1986) and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Padley was waiving, and other

matters. The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report does not address whether the court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

Our review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Turchik is relieved of further representation of Padley in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals