



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

July 16, 2014

To:

Hon. Dale L. English
Circuit Court Judge
Fond du Lac County Courthouse
160 South Macy Street
Fond du Lac, WI 54935

Barbara Van Akkeren
Clerk of Circuit Court
Calumet County Courthouse
206 Court Street
Chilton, WI 53014

Nicholas W. Bolz
District Attorney
206 Court Street
Chilton, WI 53014

Anthony J. Jurek
6907 University Avenue #191
Middleton, WI 53562-2767

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

James V. Loewe 324386
Dodge Corr. Inst.
P.O. Box 700
Waupun, WI 53963-0700

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

2013AP2654-CRNM State of Wisconsin v. James V. Loewe (L.C. #2011CF40)

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

James V. Loewe appeals from a judgment of conviction for being a party to the crime of first-degree reckless homicide. 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). Loewe has filed a response to the no-merit report, counsel filed a supplemental no-merit report, and Loewe filed a short letter in reply which did not raise any new points. RULE 809.32(1)(e), (f). Upon

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

consideration of these submissions and an independent 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.

Loewe and another man beat a man to death using a hammer, broken off axe handle, metal pipe, and a chain. Loewe was originally charged as a party to the crime of first-degree intentional homicide but entered a no-contest plea to the amended reckless homicide charge. As part of the plea agreement, a felony bail jumping charge and a theft from a financial institution charge in another case were dismissed as read-ins. Loewe received the maximum sentence of forty years' initial confinement and twenty years' extended supervision.

The no-merit report addresses the potential issues of whether Loewe's plea was freely, voluntarily, and knowingly entered and whether the sentence was excessive or otherwise an erroneous exercise of discretion. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further. Also, our review of the record discloses no other potential issues for appeal.²

Loewe's response to the no-merit report first focuses on information included in the presentence investigation report (PSI).³ Loewe complains that his trial counsel did not go over

² A motion to suppress evidence obtained before the execution of a search warrant was filed but not decided because of Loewe's decision to accept the plea agreement and enter a no-contest plea. By entry of his no-contest plea, Loewe elected to abandon the suppression motion and any related potential issues have been forfeited. *Cf. State v. McDonald*, 50 Wis. 2d 534, 537, 184 N.W.2d 886 (1971) (holding that deliberate abandonment of suppression motion prior to trial constituted waiver). *See also State v. Keltz*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886 (a no-contest plea forfeits the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights).

³ We note that the PSI is included in the record but is not sealed or otherwise identified as subject to the confidentiality requirement of WIS. STAT. § 972.15(4).

all of the PSI with him and he did not have enough time to review the PSI to make necessary corrections. However, at sentencing, Loewe's trial counsel indicated he had gone over the PSI with Loewe and offered no corrections to the information because the PSI itself reflected Loewe's inability to remember certain details. Loewe made no complaint to the sentencing court that his review of the PSI was less than complete. "One cannot proceed quietly with sentencing and then, on appeal, assert for the first time [an inadequate opportunity to review the PSI] and claim entitlement to resentencing." *State v. DeMars*, 171 Wis. 2d 666, 676, 492 N.W.2d 642 (Ct. App. 1992).

Loewe makes various complaints about inaccurate information in the PSI. First he claims that he has more of a work history than that stated in the PSI but he concedes he has a hard time remembering job information and provides no details about potential inaccuracies. At most the PSI omits information about his job history rather than misstates it. As the supplemental no-merit report observes, the remaining complaints Loewe makes about inaccuracies in the PSI are with respect to the characterization of Loewe's conduct and attitude and the author's interpretation of statements to police and investigative reports regarding the welfare of Loewe's children. Although Loewe offers alternative characterizations and interpretations, he does not point to any actual factual inaccuracies. The same is true with Loewe's complaints about the prosecutor's or sentencing court's characterization of his involvement in the crime. No factual inaccuracies are identified.

Loewe also claims that at the time of the plea hearing his judgment was clouded by medication and he was rushed through the plea questionnaire and plea negotiations. The plea colloquy dispels any notion that Loewe was impaired by the medication he was taking. Loewe was asked if his medications kept him from understanding the proceeding and he confirmed they

did not. The record also shows Loewe was not rushed in negotiations or to enter the plea. Loewe executed a plea agreement on August 28, 2011, and his plea was not taken until May 16, 2012.⁴ Loewe had months to process his acceptance of the plea agreement and change his mind if he wanted to.

As to the points raised in Loewe's response to the no-merit report, we accept the supplemental no-merit report's discussion and conclusion that those points do not present issues of arguable merit. This court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Loewe 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 Anthony J. Jurek is relieved from further representing James V. Loewe in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

⁴ Entry of the plea was put off because the plea agreement was dependent on Loewe's testimony at the trial of his co-actor.