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DISTRICT II

December 17, 2014

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

2014AP1750-CRNM State of Wisconsin v. Timothy J. Schneider (L.C. # 2013CF397)

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

Timothy J. Schneider appeals from a judgment convicting him of arson of a building without the owner's consent. Schneider'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). Schneider received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with

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

arguable merit for appeal. Therefore, we summarily affirm the judgment and remand with directions.² WIS. STAT. RULE 809.21.

The no-merit report addresses the following appellate issues: (1) whether Schneider's no contest plea was knowingly, voluntarily, and intelligently entered and had a factual basis, and (2) whether the circuit court properly exercised its discretion at sentencing.

With respect to the entry of Schneider's no contest plea, the record shows that the circuit court engaged in a colloquy with Schneider 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 906.³ A signed plea questionnaire and waiver of rights form was entered into the record. Furthermore, the court correctly determined that the allegations in the complaint provided a factual basis for the crime charged. We agree with counsel that any challenge to the entry of Schneider's no contest plea would lack arguable merit.

With respect to the sentence imposed, the record reveals that the circuit court's decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. In imposing a sentence of seventeen years of imprisonment, the court considered the seriousness of the offense, Schneider's character, and the need to protect the public. *State v.*

² The judgment of conviction erroneously describes Schneider's plea as "Not Guilty," even though he entered a no contest plea at the plea hearing held on October 7, 2013. We remand the matter to the circuit court so that the judgment can be amended.

³ There is one exception to this. The circuit court failed to inform Schneider that it was not bound by the parties' plea agreement, as required by *State v. Hampton*, 2004 WI 107, ¶32, 274 Wis. 2d 379, 683 N.W.2d 14. This failure does not present a potentially meritorious issue for appeal, however, because the court accepted the parties' agreement and did not exceed the sentence recommended by the State. See *State v. Johnson*, 2012 WI App 21, ¶¶13-14, 339 Wis. 2d 421, 811 N.W.2d 441.

Ziegler, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by the viciousness of the offense,⁴ the sentence 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.

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 Suzanne L. Hagopian of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Suzanne L. Hagopian is relieved of further representation of Schneider in this matter.

Diane M. Fremgen
Clerk of Court of Appeals

⁴ Schneider tried to burn down his own mother’s home out of anger that she had locked him out. The circuit court described the act as “an incredible episode of hatred, vindictiveness, and meanness that ... cause[d] him to light this fire.”