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DISTRICT IV

December 12, 2014

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

2013AP1805-CRNM	State of Wisconsin v. Zachary J. Deyo (L.C. # 2012CF207)
2013AP1806-CRNM	State of Wisconsin v. Zachary J. Deyo (L.C. # 2012CF385)

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

Attorney Timothy O'Connell, appointed counsel for Zachery Deyo, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12);¹ *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to: (1) a claim of ineffective assistance of counsel for failing to obtain discovery before Deyo entered his plea; (2) a challenge to the validity of Deyo's plea; or (3) a

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

challenge to the validity of Deyo's sentencing. Deyo was sent 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.

Deyo was charged with three counts of felony bail jumping in these two cases. Pursuant to a plea agreement, Deyo pled no contest to one count of felony bail jumping in each case, and the remaining charge was dismissed and read-in for sentencing purposes.² The court withheld sentence and placed Deyo on concurrent three-year terms of probation, consecutive to Deyo's sentence in another case.

First, the no-merit report addresses whether there would be arguable merit to a claim of ineffective assistance of counsel because counsel failed to obtain discovery in one of the cases before Deyo entered his plea. The no-merit report notes that the second bail jumping case was filed the day before Deyo entered his pleas pursuant to a global plea agreement involving these cases and several other cases. It also notes that it appears from the record and no-merit counsel's discussions with Deyo that Deyo's trial counsel may have failed to obtain discovery in that case before Deyo entered his plea, which would support an argument that counsel's performance was deficient. *See State v. Thiel*, 2003 WI 111, ¶37, 264 Wis. 2d 571, 665 N.W.2d 305. However, no-merit counsel also informs us that, based on his discussions with Deyo, there is no basis to contend that Deyo would not have entered his pleas pursuant to the global plea agreement based

² The plea agreement was a global plea agreement involving several other cases against Deyo. Under the global plea agreement, Deyo pled guilty to two felony bail jumping charges in these cases, and ten burglary charges in another case. The remaining charges were all dismissed but read-in.

on any information that could have been obtained from discovery in his second bail jumping case. Accordingly, we agree that this issue lacks arguable merit.

Next, the no-merit report addresses the validity of Deyo'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 Deyo and determine information such as Deyo's ability to understand the proceedings, that no promises were made to Deyo to obtain his pleas, and that factual bases existed to support the pleas.³ See *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Deyo's plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Deyo's sentence. At Deyo's sentencing hearing, the State argued for the court to follow the presentence investigation report's recommendation of imposed and stayed sentences with concurrent three-year terms of probation, consecutive to Deyo's sentence in another case. Deyo agreed to the recommendation, but asked the court to withhold sentence. The court withheld sentence and placed Deyo on three years of probation, concurrent to each other but consecutive

³ Counsel informs us in the no-merit report that it may be argued that the plea colloquy was insufficient in that the circuit court failed to state on the record: (1) that the court was not bound by the plea agreement; (2) the elements of felony bail jumping; and (3) each of the constitutional rights Deyo gave up by entering his pleas. Counsel also informs us, however, that he has determined after discussions with Deyo that there is no basis to argue that Deyo did not understand any of that information when he entered his pleas.

to Deyo's sentencing in his other case. Because Deyo affirmatively approved the sentencing disposition, Deyo may not challenge that disposition on appeal. *See State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgments 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 judgments of conviction are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney O'Connell is relieved of any further representation of Deyo in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals