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DISTRICT II

December 23, 2014

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

2014AP2394-CRNM State of Wisconsin v. Robert L. Canfield (L.C. # 2013CF108)

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

Robert L. Canfield appeals from a judgment of conviction for being a party to the crime of burglary. 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). Canfield received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the

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

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.

Canfield and his girlfriend broke into a tanning salon and stole cash and other items. He also broke into a jewelry store that same night and transported items taken from that store to a residence in Ozaukee county. He and his girlfriend were charged as parties to the crime of burglary and concealing stolen property.[2] He entered a guilty plea to the burglary charge and the stolen property charge was dismissed as a read-in. The prosecution agreed to recommend a four-year sentence and did so at sentencing. Canfield faced a twelve and one-half year maximum sentence. He was sentenced to five years' initial confinement and five years' extended supervision.[3] The DNA surcharge imposed at sentencing was vacated on Canfield's postconviction motion.

The no-merit report addresses the potential issues of whether Canfield's plea was freely, voluntarily, and knowingly entered and whether the sentence was the result of an erroneous exercise of discretion. This court is satisfied that the no-merit report properly analyzes the issues

[2] The concealing stolen property charge was originally a misdemeanor based on the value of the items concealed. The charge was amended to a felony when the value of the stolen items became known.

[3] Canfield was first sentenced to seven years' extended supervision. The term of extended supervision was commuted without objection to five years after the court was made aware that five years was the maximum amount of supervision that could be ordered.

it raises as without merit, and this court will not discuss them further.[4] These are the only potential issues for appeal because by his guilty plea Canfield forfeited the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. ***State v. Kelty***, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886; ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

This court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Canfield 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.

[4] At the conclusion of the plea colloquy the circuit court made reference to having discussed with Canfield restitution and the read-in charge. However, the circuit court never informed Canfield that restitution could be imposed for the read-in charge. *See* ***State v. Straszkowski***, 2008 WI 65, ¶¶5, 97, 310 Wis. 2d 259, 750 N.W.2d 835 (the circuit court "should advise a defendant that it may consider read-in charges when imposing sentence but that the maximum penalty of the charged offense will not be increased; that a circuit court may require a defendant to pay restitution on any read-in charges; and that the State is prohibited from future prosecution of the read-in charge"). However, that information is included on the plea questionnaire and the form Canfield signed has a handwritten asterisk by the sentence indicating his understanding that he could be required to pay restitution on any read-in charges. Presumably Canfield's attention was drawn to that information. Not only did the circuit court utilize the plea questionnaire in ascertaining Canfield's understanding of the consequences of his guilty plea, no restitution was ordered on the read-in charge. There is no arguable merit to a possible claim that Canfield's plea was not knowingly made because the circuit court did not recite information about imposing restitution for the read-in charge. *See* ***State v. Johnson***, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 441 (plea withdrawal is not justified unless the fundamental integrity of the plea is seriously flawed).

IT IS FURTHER ORDERED that Attorney Mark S. Rosen is relieved from further representing Robert L. Canfield in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals