



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

April 29, 2015

To:

Hon. Charles H. Constantine
Circuit Court Judge
Racine County Courthouse
730 Wisconsin Ave.
Racine, WI 53403

Rose Lee
Clerk of Circuit Court
Racine County Courthouse
730 Wisconsin Ave.
Racine, WI 53403

Russell D. Bohach
The Gettelman Mansion
2929 W. Highland Blvd.
Milwaukee, WI 53208

W. Richard Chiapete
District Attorney
730 Wisconsin Ave.
Racine, WI 53403

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

Kiori J. Billups, #608747
Green Bay Corr. Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2014AP2664-CRNM State of Wisconsin v. Kiori J. Billups (L.C. #2012CF841)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Kiori J. Billups appeals a judgment convicting him of felony murder as a party to a crime. Billups' appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738 (1967). Billups 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

¹ All references to the Wisconsin Statutes are to the 2013-14 version.

and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. RULE 809.21.

In July 2012, the State filed a criminal complaint against Billups for his actions involving the armed robbery and shooting death of Jeremiah Brook. According to the complaint, Billups set up the armed robbery of Brook for another accomplice. The fatal shooting occurred after Brook struggled for possession of the accomplice's firearm.

After the filing of the complaint, Billups' attorney raised the issue of competency. The circuit court ordered Billups to be evaluated by a court-appointed examiner. That examiner concluded that Billups was competent to proceed. Billups then retained his own examiner, who found him not competent and not likely to regain competence within the statutory time period. Following a hearing on the matter, the circuit court deemed the court-appointed examiner more credible and found Billups competent.

Eventually, Billups entered a no contest plea to the charge of felony murder as a party to a crime. Additional charges of armed robbery as a party to a crime and misdemeanor bail jumping were dismissed and read in. The circuit court imposed a sentence of twenty-two years of initial confinement followed by thirteen years of extended supervision. This no-merit appeal follows.

The no-merit report first addresses whether the circuit court properly determined that Billups was competent to proceed. The findings of a circuit court in a competency hearing will not be upset unless they are clearly erroneous. *State v. Byrge*, 2000 WI 101, ¶4, 237 Wis. 2d 197, 614 N.W.2d 477. Here, the court found that, while suffering from some cognitive deficits, Billups was able to understand the nature of the proceedings and assist in his defense. As the

record contains evidence to support these findings, the court's decision is not clearly erroneous. We agree with counsel that any challenge to the court's competency determination would lack arguable merit.

The no-merit report next addresses whether Billups' no contest plea was knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Billups 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 906.² In addition, a signed plea questionnaire and waiver of rights form was entered into the record. That form and attachment setting forth the elements of the offense are competent evidence of a valid plea. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). We agree with counsel that any challenge to the entry of Billups' no contest plea would lack arguable merit.

Finally, the no-merit report addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the circuit court's decision had a "rational and explainable basis." *See State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In imposing a sentence of thirty-five years of imprisonment, the court considered the seriousness of the offense, Billups' character, and the need to protect the public. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, the sentence, which was well within the maximum possible penalty,

² There is one exception to this. The circuit court failed to provide the deportation warning required by WIS. STAT. § 971.08(1)(c). This failure does not present a potentially meritorious issue for appeal, however, as there is no indication that Billups' plea is likely to result in his deportation, exclusion from admission to this country, or denial of naturalization. Section 971.08(2).

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 any 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 Russell D. Bohach 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.

IT IS FURTHER ORDERED that Attorney Russell D. Bohach is relieved of further representation of Billups in this matter.

Diane M. Fremgen
Clerk of Court of Appeals