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DISTRICT II

May 20, 2015

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

2014AP917-CRNM State of Wisconsin v. Daniel D. Jackson (L.C. #2013CF198)

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

Daniel D. Jackson appeals from a judgment convicting him of two counts of manufacture/deliver cocaine (<=1 gram) and one count of manufacture/deliver heroin (<=3 grams). Jackson's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Jackson was notified of his right to file a response but has not done so. Upon consideration of the report and our

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

independent review of the record as mandated by ***Anders***, we conclude that the judgment may be summarily affirmed. *See* WIS. STAT. RULE 809.21. We accept the no-merit report and relieve Attorney Timothy T. O'Connell of further representing Jackson in this matter.

Jackson entered no-contest pleas to the above-stated crimes, all with a penalty enhancer because the offenses occurred within 1000 feet of a park. *See* WIS. STAT. § 961.49(1m)(b)1. Six other drug charges were dismissed as read-ins for sentencing. On the two cocaine charges, the court sentenced Jackson to three years' initial confinement plus five years' extended supervision, to be served concurrently. On the heroin charge, it sentenced him to three years' initial confinement plus five years' extended supervision, consecutive to the other two sentences.[2] This no-merit appeal followed.

The no-merit report first considers whether the plea taking presents a potential issue of arguable merit. Counsel correctly observes that the plea colloquy was cursory to the point of inadequacy. For example, it did not expressly advise Jackson of the constitutional rights he was waiving,[3] ascertain that he understood potential non-citizenship consequences, or explain the effects of read-ins. *See* WIS. STAT. § 971.08(1); ***State v. Bangert***, 131 Wis. 2d 246, 271-72, 389 N.W.2d 12 (1986); ***Garski v. State***, 75 Wis. 2d 62, 77, 248 N.W.2d 425 (1977). Jackson therefore could claim on appeal or by postconviction motion that he should be allowed to withdraw his plea as unknowingly and involuntarily entered. Counsel represents, however, that

[2] The court also ordered Jackson to pay the DNA surcharge. Postconviction, Jackson successfully moved to vacate the surcharge. It therefore is not at issue on appeal.

[3] The court asked Jackson if he understood he was giving up the constitutional rights discussed at the initial appearance, and Jackson responded "Yes." The specific constitutional rights discussed at the initial appearance do not appear in the transcript, however. Rather, the transcript refers only to the constitutional rights discussed earlier that day.

he discussed the issue with Jackson and Jackson informed him that he desires to waive his right to raise the issue, even if meritorious, so as to preserve the benefits of the plea bargain.

The no-merit report also examines whether the sentence was the result of an erroneous exercise of discretion. We agree that there would be no arguable basis to assert that the circuit court erroneously exercised its sentencing discretion, *see* ***State v. Gallion***, 2004 WI 42, ¶¶41-43 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197, or that the sentence was excessive, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Sentencing is left to the discretion of the circuit court, and appellate review is limited to determining whether that discretion was erroneously exercised. ***Gallion***, 270 Wis. 2d 535, ¶17. The court here fully addressed the primary sentencing factors—the gravity of the offense, the character of the offender, and the need to protect the public, ***State v. Spears***, 227 Wis. 2d 495, 507, 596 N.W.2d 375 (1999)—and the relevant sentencing objectives—protection of the public, punishment or rehabilitation of the defendant, and deterrence to others, ***Gallion***, 270 Wis. 2d 535, ¶¶40-41. The weight to be given each of the factors is a determination particularly within the court's discretion. ***Ocanas***, 70 Wis. 2d at 185.

The record reveals that the court set forth a "rational and explainable basis" for its decision. *See* ***Gallion***, 270 Wis. 2d 535, ¶76 (citation omitted). It placed particular weight on the seriousness of the offenses, Jackson's character, and the need for him to set a better example for his ten young children. The sentence, well under the forty-seven and one-half years he faced, is not "so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Ocanas***, 70 Wis. 2d at 185.

Our independent review of the record reveals no other nonfrivolous issues.

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 Timothy T. O'Connell is relieved of further representing Jackson in this matter.

Diane M. Fremgen
Clerk of Court of Appeals