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DISTRICT II

June 17, 2015

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

2014AP2852-CRNM State of Wisconsin v. Danny L. Carlson (L.C. #2013CF1372)

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

Danny L. Carlson appeals from a judgment, entered upon his guilty pleas, convicting him of attempted first-degree intentional homicide, as an act of domestic abuse, and to aggravated battery, both while using a dangerous weapon and as a repeater. Carlson's 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). Carlson was advised of his right to file a response but, despite an extension

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

of time, has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by ***Anders*** and RULE 809.32, we conclude that the 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. We affirm the judgment, accept the no-merit report, and relieve Attorney Leon W. Todd III of further representing Carlson in this matter.

Distraught that his wife was going to leave him, Carlson grabbed two kitchen knives, locked himself in a room with her, and, saying, "If I can't have you, no one can," repeatedly stabbed her about her head, face, neck, shoulder, and torso, inflicting life-threatening wounds. The daughter hid in a bedroom and then fled the house. Carlson's uncle tried to stop the assault. Carlson stabbed him in the shoulder and chest, puncturing a lung, then tried to take the uncle's money. Carlson told police he intended to kill his wife.

The State filed a five-count criminal complaint. Counts one through three—attempted first-degree intentional homicide, aggravated battery, and false imprisonment, all while using a dangerous weapon, as an act of domestic abuse, as a repeater—related to the wife. Counts four and five—aggravated battery while using a dangerous weapon and attempted armed robbery, both as a repeater—related to the uncle.

Carlson pled guilty to attempted first-degree intentional homicide Count 1 and Count 4 with the weapon and repeater penalty enhancers. The remaining charges were dismissed and read in at sentencing. Two misdemeanor charges in an unrelated case were dismissed outright. The trial court imposed a global eighty-year sentence: forty-five years' initial confinement (I.C.) and fifteen years' extended supervision (E.S.) on Count 1, consecutive to a sentence he was

serving in another case, and fifteen years' I.C. plus five years' E.S. on Count 4, consecutive to Count 1. This no-merit appeal followed.

The no-merit report first considers whether there is arguable merit to a challenge to Carlson's guilty plea. We agree with appellate counsel that there is not. Carlson executed a plea questionnaire and waiver-of-rights form that, along with the court's colloquy, informed him of the constitutional rights he waived by pleading guilty, the elements of the offense, and the potential sentence.[2] In response to the court's inquiry, Carlson said he understood what was written on the plea questionnaire. The court emphasized that it was not bound by the plea negotiations or the presentence investigation recommendation and could sentence him to the maximum prison term. Carlson acknowledged his guilt. The record shows that the plea was knowingly, voluntarily and intelligently entered. *See* ***State v. Hampton***, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14; ***State v. Bangert***, 131 Wis. 2d 246, 260-62, 389 N.W.2d 12 (1986). Entry of a valid guilty plea constitutes a waiver of any nonjurisdictional defects and defenses. *See* ***id.*** at 265-66.

We also agree with appellate counsel that there would be no arguable basis to assert that the trial court erroneously exercised its sentencing discretion, *see* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197, or that the eighty-year sentence was unduly harsh, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The court considered the

[2] The circuit court failed to advise Carlson of a plea's potential deportation consequences. *See* WIS. STAT. § 971.08(1)(c). The record indicates, however, that Carlson was born in Chicago and reared in Illinois and Wisconsin, and he checked the "Understanding" of deportation warnings on the plea questionnaire. Carlson likely could not show that his plea is likely to result in his being deported. *See* ***State v. Douangmala***, 2002 WI 62, ¶23, 253 Wis. 2d 173, 646 N.W.2d 1; *see also* § 971.08(2).

principal objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, and determined that the gravity of the offense and need to protect the public were of greatest importance. ***Gallion***, 270 Wis. 2d 535, ¶¶40-41.

In fashioning its sentence, the court took into account Carlson's rough childhood, his education, and his owning up to what he had done. Outweighing the mitigating factors, however, was the seriousness of both the crimes of conviction and the read-ins. The court termed it "probably the most horrific case" it had read in a presentence report. It stated that a lengthy prison term was necessary to punish Carlson, protect the community, and send a message to others. The court also explained that it imposed consecutive sentences because there were two victims, one who was gravely injured and the other who risked—and endured—great harm to save the first one's life.

Carlson faced seventy-two years' I.C. and twenty-five years' E.S. Considering the savagery and deliberateness of the attacks, the intent to kill his wife, and the severe injuries inflicted, not to mention the psychological trauma the victims described at sentencing, a claim could not be sustained that the sentence "is 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 discloses no other potential issues for appeal.

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 Leon W. Todd III is relieved of further representing Carlson in this matter.

Diane M. Fremgen
Clerk of Court of Appeals