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DISTRICT IV

July 21, 2015

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

2013AP2795-CRNM State of Wisconsin v. Shawn David Stuhr (L.C. # 2011CF301)

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

Attorney Eileen Hirsch, appointed counsel for Shawn David Stuhr, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)[1] and ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to challenge: (1) the court's decision as to restitution; (2) the trial judge's denial of Stuhr's request that the judge recuse himself; (3) Stuhr's plea; or (4) the

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

sentence imposed by the court. Stuhr 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.

Stuhr was charged with felony bail jumping and criminal damage to property, based on a police investigation indicating that Stuhr had intentionally damaged property Stuhr had rented from John Yahnke. Defense counsel requested that the court hold a restitution hearing prior to Stuhr deciding whether to enter a plea agreement. Following a contested restitution hearing, the court determined that the amount of restitution Stuhr would owe upon conviction would be $795.57, plus the surcharge.

Stuhr requested that the judge recuse himself based on statements the judge made at the restitution hearing, which Stuhr interpreted as displaying bias in favor of landlords. The judge determined that none of his comments at the restitution hearing suggested bias in favor of landlords, and denied the recusal request.

Stuhr then pled no-contest to felony bail jumping and the criminal damage charge was dismissed but read-in for sentencing purposes, pursuant to a plea agreement. The court followed the parties' joint recommendation and sentenced Stuhr to fifty days in jail, plus restitution and the surcharge in the amount of $ 875.12, with the balance after bond converted to a civil judgment. The court granted Stuhr's request to approve electronic monitoring as the means of serving jail time, and granted two days of sentence credit on counsel's stipulation.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the court's decision on restitution. We agree with counsel that the court followed the proper

statutory procedure for determining restitution. *See* WIS. STAT. § 973.20. We also agree that a challenge to the court's exercise of discretion in imposing restitution would lack arguable merit. *See* § 973.20(1r), (2b).

Next, the no-merit report addresses the trial judge's decision denying Stuhr's recusal request. We agree with counsel that the judge identified the relevant statutory provision as WIS. STAT. § 757.19(2)(g), which requires recusal "[w]hen a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner." Because our review is limited to whether the judge made the required determination, ***State v. American TV & Appliance of Madison, Inc.***, 151 Wis. 2d 175, 183, 443 N.W.2d 662 (1989), and the judge did so here, we agree that a challenge to the judge's decision would lack arguable merit.

The no-merit report also addresses whether there would be arguable merit to a challenge to the validity of Stuhr's plea. A postsentencing 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, together with the plea questionnaire and waiver of rights form that Stuhr signed, satisfied the court's mandatory duties to personally address Stuhr and determine information such as Stuhr's understanding of the nature of the charge and the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea. *See* ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Stuhr's plea would lack arguable merit.

Finally, the no-merit report addresses whether there would be arguable merit to a challenge to Stuhr's sentence. We agree with counsel that, because Stuhr received the sentence he approved, he is barred from challenging the sentence on appeal. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 517-18, 451 N.W.2d 759 (Ct. App. 1989). We discern no other basis to challenge the sentence imposed by the circuit court.

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

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

Diane M. Fremgen
Clerk of Court of Appeals