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DISTRICT II

July 29, 2015

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

2014AP1101-CRNM State of Wisconsin v. Ralph Harold Ricketts (L.C. #2012CF660)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

Ralph Harold Ricketts appeals from a judgment of conviction entered upon his guilty pleas to false imprisonment and misdemeanor battery and from an order denying his postconviction motion. Ricketts'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). Ricketts received a copy of the report and filed a response. Upon consideration of the no-merit report and

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

response and an independent review of the record, we conclude that the judgment and order 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.

Based on a June 12, 2012 incident, Ricketts was charged in a three-count complaint with strangulation and suffocation, misdemeanor battery as a domestic abuse offense, and disorderly conduct. Pursuant to a negotiated agreement, Ricketts pled guilty to an amended charge of false imprisonment in violation of WIS. STAT. § 940.30 and to misdemeanor battery as a domestic abuse offense, contrary to WIS. STAT. §§ 940.19(1) and 973.055(1). The State moved to dismiss and read in the disorderly conduct charge and agreed to recommend a four-year bifurcated sentence with two years' initial confinement and two years' extended supervision, to run consecutive to a previously imposed sentence. The sentencing court followed the State's recommendation and on count one, false imprisonment, imposed two years of initial confinement followed by two years of extended supervision to run consecutive to the sentence Ricketts was then serving. On the battery, the court ordered a six-month jail sentence to be served concurrent with count one. The court did not order a fine, restitution, or a DNA surcharge, and it found Ricketts ineligible for the Challenge Incarceration Program, but eligible for the Earned Release Program (ERP).

Ricketts, by appointed counsel, filed a postconviction motion alleging that he subsequently learned he was statutorily ineligible for the ERP and that this constituted a new factor supporting a sentence modification. After a hearing, the trial court denied the motion.

The no-merit report addresses whether there is any basis for a challenge to the validity of Ricketts's guilty pleas and whether the trial court appropriately exercised its discretion at

sentencing and in denying Ricketts's postconviction motion for a sentence modification. We agree with appellate counsel that these issues lack arguable merit.

With regard to Ricketts's guilty pleas, the record demonstrates that the trial court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1)(a), ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. The trial court specifically ascertained Ricketts's understanding of the parties' plea agreement, of the maximum penalties for both offenses, and that the court was not bound by the parties' agreement or recommendations and could impose the maximum sentence. The trial court informed Ricketts of the elements of each offense and the constitutional rights waived by his guilty pleas, and Ricketts confirmed that he understood this information and wished to plead guilty. In addition, the court specifically drew Ricketts's attention to the completed plea questionnaire on file and ascertained that he had read and signed the form. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (a completed plea questionnaire and waiver of rights form is competent evidence of a knowing, intelligent, and voluntary plea). With the parties' consent, the trial court relied on the criminal complaint and properly determined that it established a factual basis for the offenses of conviction.

In his response to counsel's no-merit report, Ricketts asserts that he is "Not Guilty of the charge of Felony Strangulation Suffocation that was amended to False Imprisonment" and should be permitted to withdraw his plea. Without further explanation, he states that early on in the case, the victim sent a notarized letter to the district attorney's office that "clearly explained … what exactly happened on the day of June 12, 2012."

To withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective and the defendant did not understand information that should have been provided, ***Bangert***, 131 Wis. 2d at 274-75, or demonstrate that under the analysis of ***State v. Bentley***, 201 Wis. 2d 303, 548 N.W.2d 50 (1996), factors extrinsic to the plea colloquy rendered his plea infirm. *See* ***State v. Hoppe***, 2009 WI 41, ¶3, 317 Wis. 2d 161, 765 N.W.2d 794. In this case, the plea colloquy was sound, and nothing in Ricketts's response suggests that his pleas, entered pursuant to a negotiated agreement, were unknowing, unintelligent, or involuntary. At the plea hearing, Ricketts agreed that he was "of sound mind and body to fully appreciate" and "fully understand" the consequences of his guilty pleas, and confirmed that he discussed his "options here which include any possible defenses to the underlying charges" with his attorney. Ricketts does not suggest how the victim's letter, which existed well before the plea hearing, might give rise to an arguably meritorious issue.

With regard to the sentence, the record reveals that the trial court's discretionary decision had a "rational and explainable basis." ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. The court considered the seriousness and violent nature of the offense, the defendant's character, including his lengthy criminal record and longstanding alcoholism, and the need to protect the public in the face of Ricketts's history of losing control. *See* ***State v. Ziegler,*** 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court explained that Ricketts required treatment in a confined setting. The sentence was not so excessive or unusual as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There is no meritorious challenge to the sentencing court's exercise of discretion.

We also conclude that the trial court properly exercised its discretion in determining that Ricketts's ineligibility for the ERP did not constitute a new factor justifying the modification of

his sentence. A new factor is "a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because … it was unknowingly overlooked by all of the parties." ***State v. Harbor***, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted). The existence of a new factor does not automatically entitle the defendant to sentence modification. ***Id.***, ¶37. Here, the trial court determined that while Ricketts's ERP ineligibility might technically be considered a new factor, it was not highly relevant to the sentence imposed given the concerns and objectives identified at the time of sentencing. *See* ***id.***, ¶¶36-37 (whether a new factor justifies sentence modification is a discretionary determination for the trial court). The court further explained that shortening the two-year period of initial confinement would thwart its original intent by making it less likely that Ricketts would receive institutional programming.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment and order, and discharges appellate counsel of the obligation to represent Ricketts further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Thomas J. Erickson is relieved from further representing Ralph Harold Ricketts in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals