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DISTRICT II

November 4, 2015

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

2015AP1122-CRNM State of Wisconsin v. Tommy V. Douyette (L.C. # 2011CF648)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Tommy V. Douyette appeals a judgment convicting him of first-degree reckless homicide as a party to a crime. Douyette's 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). Douyette received a copy of the report, was advised of his right to file a response, and has elected not to do so. After

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

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

On June 30, 2011, the State charged Douyette and codefendant Lynn Hajny with one count each of first-degree intentional homicide as a party to a crime. According to the criminal complaint, police responded to the home of John C. Aegerter after one of Aegerter's employees reported that Aegerter did not show up for work. Police found Aergerter deceased on his garage floor, his ankles tied, a cord wrapped around his neck, his face wrapped with duct tape, grocery bags over his head, and a sleeping bag covering his body.

Later that day, Hajny's cousin called police to report that Hajny and Douyette were at her home and had confessed to killing Aegerter. According to the cousin, Hajny told her that "Tom snapped his neck." Hajny said that they covered up the body and were investigating how to clean the scene and dissolve Aegerter's body. Police responded and arrested both suspects.

Douyette confessed during an interview that night at the Brookfield Police Department. He said that he and Hajny went to Aegerter's house because Aegerter owed Hajny's husband money. He said Hajny told him to hit and hurt Aegerter, and that he punched Aergerter seven to nine times in the head and face. He admitted to cleaning up the area and said that he "kinda" remembered putting the sleeping bag over Aegerter's body.

Police recovered additional evidence from both suspects. Both had blood on their shoes, and Douyette's shirt was covered in blood. Douyette gave police a key that he took from Aegerter's home. Hajny, meanwhile, had Aegerter's wallet, identification, and several of his keys.

Douyette later moved to suppress his confession. Three officers testified at the motion hearing. The first officer testified that he arrested Douyette and drove him to the Slinger Police Department, where Douyette would wait for Brookfield police to pick him up. No interrogation was conducted at that time. Douyette was allowed to use the restroom and to smoke, and was given soda and a hamburger. Altogether, Douyette was at the Slinger Police Department from about 1:00 p.m. until between 4:15 and 4:30 p.m.

The second officer testified that he took Douyette to the Brookfield Police Department, where they arrived at about 5:00 p.m. Again, no interrogation was conducted. The only significant interaction was that, when Douyette asked the officer what would happen in Brookfield, the officer told him that he would probably be given the opportunity to talk to a detective. The officer did deny Douyette's request to speak with Hajny. Douyette was allowed to use the restroom and smoke upon request.

Finally, the third officer, a police detective, testified that he read Douyette his ***Miranda***[2] rights at about 8:05 p.m., and Douyette said he was willing to make a statement without a lawyer present. Douyette then gave his confession, beginning at 8:09 p.m. and ending at 8:51 p.m. He subsequently consented to a search of his home and DNA, arranged for officers and a social worker to check on his elderly father, and wrote a letter to his father. Again, Douyette was allowed to use the restroom and to smoke, and was given soda and food. Douyette was not threatened or promised anything to induce his confession.

[2] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

Based on this testimony, the circuit court found that Douyette understood and properly waived his ***Miranda*** rights and that his statement was voluntary. It therefore denied the motion to suppress.

Douyette subsequently entered a plea agreement and pled guilty to the amended charge of first-degree reckless homicide as a party to a crime. The circuit court sentenced Douyette to thirty years of initial confinement followed by twenty years of extended supervision. This no-merit appeal follows.

The no-merit report first addresses whether the circuit court properly denied Douyette's motion to suppress his statement. As noted, the circuit court held a hearing on the motion. Based on the uncontroverted testimony of three officers, the circuit court found that Douyette understood and properly waived his ***Miranda*** rights and that his statement was voluntary. Because the record supports these determinations, we agree with counsel that any challenge to the circuit court's decision denying Douyette's motion to suppress would lack arguable merit.

The no-merit report next addresses whether Douyette's guilty plea was knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Douyette that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In addition, a signed plea questionnaire and waiver of rights form was entered into the record. That form and attached jury instructions 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 a challenge to the entry of Douyette's guilty plea would lack arguable merit.

Finally, the no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the circuit court's sentencing decision had a "rational and explainable basis." ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. In imposing its sentence, the court placed the greatest weight on the gravity of the offense, which is a proper sentencing factor. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Given the brutal nature of the offense, the sentence 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 a 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 Andrew R. Walter 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 Andrew R. Walter is relieved of further representation of Douyette in this matter.

Diane M. Fremgen
Clerk of Court of Appeals