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DISTRICT IV

November 3, 2015

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

2014AP1521-CRNM State of Wisconsin v. Larry D. Sellnow (L.C. # 2013CF55)

Before Higginbotham, Sherman and Blanchard, JJ.

Attorney Farheen Ansari, appointed counsel for Larry Sellnow, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to Sellnow's plea or sentencing. Sellnow was sent a copy of the report, but has not filed a response.

After the no-merit report was filed and the appeal was submitted to the court, Attorney Ansari was allowed to withdraw and the State Public Defender appointed Attorney Vicki Zick as successor counsel for Sellnow in this no-merit appeal. Attorney Zick filed a supplemental no-merit report, addressing whether there would be arguable merit to a challenge to the amount of sentence credit awarded to Sellnow and seeking to withdraw as appellate counsel.[1]

Upon independently reviewing the entire record, as well as the no-merit report and supplemental no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Sellnow was charged with two counts of battery to a police officer, resisting an officer, and disorderly conduct. Pursuant to a plea agreement, Sellnow pled no-contest to one count of battery to a police officer and the remaining charges were dismissed and read-in for sentencing purposes. The court sentenced Sellnow to two years of initial confinement and three years of extended supervision, consecutive to any other sentence Sellnow was currently serving.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Sellnow's plea. A post-sentencing 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 satisfied the court's

[1] By order dated May 19, 2015, we noted that Attorney Zick had identified a potentially meritorious issue as to sentence credit. We directed Attorney Zick to investigate the issue, consult with Sellnow, and provide us with an update. We sent Sellnow a copy of that order. Attorney Zick then filed a supplemental no-merit report concluding that any argument as to sentence credit would be wholly frivolous. Attorney Zick certified that she had discussed the issue with Sellnow and informed Sellnow that he may file a response. We have not received a no-merit response from Sellnow.

mandatory duties to personally address Sellnow and determine information such as Sellnow's understanding of the nature of the charges 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. The court's colloquy, together with its review of the plea questionnaire Sellnow signed, satisfied the court's duties to ensure a knowing, intelligent, and voluntary plea. ***Id.***, ¶30. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Sellnow's plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Sellnow's sentence. A challenge to a circuit court's exercise of its sentencing discretion must overcome our presumption that the sentence was reasonable. ***State v. Ramuta***, 2003 WI App 80, ¶23, 261 Wis. 2d 784, 661 N.W.2d 483. Here, the court explained that it considered facts relevant to the standard sentencing factors and objectives, including the seriousness of the offense, Sellnow's character and criminal history, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. The court imposed two years of initial confinement and three years of extended supervision and the undisputed amount requested for restitution. The court found Sellnow ineligible for the Earned Release or Challenge Incarceration Programs, explaining that the court's intent was for Sellnow to serve the full two years of initial confinement. The sentence was not so excessive or unduly harsh as to shock the conscience given the facts of this case. *See* ***State v. Grindemann***, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. We discern no erroneous exercise of the court's sentencing discretion.

The supplemental no-merit report addresses whether there would be any arguable merit to a challenge to the court's award of ten days of sentence credit. We agree with counsel's assessment that this issue lacks arguable merit.

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 Zick is relieved of any further representation of Sellnow in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals