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DISTRICT II

November 11, 2015

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

2015AP726-CRNM State of Wisconsin v. Billy J. Rhodes (L.C. # 2013CF325)

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

Billy J. Rhodes appeals from a judgment convicting him of one count of delivery of a controlled substance—heroin (three grams or less), as party to a crime. Rhodes' 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). Rhodes received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report,

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

we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

Rhodes was convicted following a guilty plea to one count of delivery of a controlled substance—heroin (three grams or less), as party to a crime. The charge stemmed from the sale of heroin to an undercover police informant in Kenosha. For his participation in the sale, the circuit court sentenced Rhodes to three years of initial confinement and three years of extended supervision. It also ordered a nominal fine of $300. This no-merit appeal follows.

The no-merit report first addresses whether Rhodes' guilty plea was knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Rhodes 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. A signed plea questionnaire and waiver of rights form was entered into the record, along with an attachment specifying the elements of the offense. Furthermore, the court correctly determined that the allegations in the complaint provided a sufficient factual basis for the plea. We agree with counsel that a challenge to the entry of Rhodes' guilty plea would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the 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. The court adequately discussed the facts and factors relevant to Rhodes' sentence. In fashioning the sentence, the court considered the seriousness of the offense, Rhodes' character, and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Rhodes' lengthy criminal

history, 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.[2]

Finally, the no-merit report addresses whether Rhodes was afforded effective assistance of trial counsel. There is nothing in the record to suggest that trial counsel was ineffective. Indeed, at the plea hearing, Rhodes indicated that he was satisfied with his trial counsel's representation. Consequently, we are satisfied that the no-merit report properly analyzes this issue as without merit, and we will not discuss it further.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.[3] 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 Mark A. Schoenfeldt 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.

[2] The circuit court found Rhodes eligible for the Substance Abuse Program. The circuit court docket entries indicate that Rhodes has successfully completed that program.

[3] At sentencing, the circuit court imposed a $250 DNA surcharge. Rhodes filed a postconviction motion challenging the surcharge because the court did not state a reason for requiring it. *See* ***State v. Cherry***, 2008 WI App 80, 312 Wis. 2d 203, 752 N.W.2d 393. Rhodes later withdrew the motion before the court could rule on it. Thus, we deem the issue abandoned. In any event, we conclude that the circuit court's sentencing rationale supports the discretionary imposition of the surcharge.

IT IS FURTHER ORDERED that Attorney Mark A. Schoenfeldt is relieved of further representation of Rhodes in this matter.

Diane M. Fremgen
Clerk of Court of Appeals