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November 19, 2015

To:

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

2014AP2282-CRNM State of Wisconsin v. Dajuan Shaquille Collins
(L.C. # 2013CF455)

Before Kloppenburg, P.J., Sherman, and Blanchard, JJ.

Attorney Maayan Silver, appointed counsel for Dajuan Collins, 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 a challenge to Collins' plea or sentencing. Collins was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well

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

as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Collins was charged in a criminal complaint and an information with two counts of felony murder by attempted armed robbery. The State filed an amended information charging Collins with two counts of first-degree intentional homicide and two counts of attempted armed robbery, all as a party to a crime. Pursuant to a plea agreement, Collins pled no contest to two counts of felony murder, as a party to a crime,[2] and the State withdrew the amended information; additionally, the State recommended substantial consecutive periods of incarceration and requested a presentence investigation report with no sentencing recommendation, and the parties agreed Collins would be jointly and severally liable for restitution along with his co-actors. The court sentenced Collins to thirteen years of initial confinement and seven years of extended supervision as to each count, to be served consecutively.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Collins' 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 mandatory duties to personally address Collins and determine information such as Collins' understanding of the

[2] We note that the original information did not reference the party to a crime statute. During the plea colloquy, the circuit court asked Collins whether he was pleading guilty to the felony murder charges as a party to a crime, and explained party to a crime liability. Collins confirmed that he was pleading guilty as a party to a crime and that he understood party to a crime liability. However, the judgment of conviction does not indicate that Collins was convicted as a party to a crime. Because this appears to be a clerical error, upon remittitur, the court shall enter an amended judgment of conviction indicating that Collins was convicted as a party to a crime.

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. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Collins' plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Collins' 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, Collins' character and criminal history, and the need to protect the public, as well as for punishment and deterrence. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was well within the maximum Collins faced, and therefore was not so excessive or unduly harsh as to shock the conscience. *See* ***State v. Grindemann***, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507. The court entered a restitution order and granted sentence credit as stipulated by the parties, and determined that Collins was to pay the DNA surcharge and would be ineligible for the Challenge Incarceration and Earned Release Programs. We discern no erroneous exercise of the court's sentencing discretion.

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 modified to reflect that Collins was convicted as a party to a crime, and as modified, affirmed pursuant to WIS. STAT. RULE 809.21.

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

Diane M. Fremgen
Clerk of Court of Appeals