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DISTRICT II/IV

November 19, 2015

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

2014AP1533-CRNM State of Wisconsin v. Larry L. Burling (L.C. # 2013CF56)

Before Lundsten, Higginbotham and Sherman, JJ.

Attorney William Donarski, appointed counsel for Larry Burling, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2013-14)¹; *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to Burling's plea or sentencing. Burling was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as

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

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

Burling was charged with one count of sex offender registry violation. Pursuant to a plea agreement, Burling pled no contest to the charged crime, the State requested a presentence investigation report, and both sides were free to argue at sentencing. The court sentenced Burling to twenty-two months of initial confinement and three years of extended supervision.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Burling's plea. A postsentencing 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 Burling and determine information such as Burling's understanding of the nature of the charge 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. Additionally, we agree with counsel that a challenge to the factual basis for the plea would lack arguable merit. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Burling's plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Burling's sentence. A challenge to a circuit court's exercise of its sentencing discretion must overcome the 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, Burling'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 sentence was within the maximum Burling faced, and given the facts of this case, 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. Additionally, the court granted Burling 272 days of sentence credit on counsel's stipulation, determined that Burling would be responsible for the cost of the DNA sample, and that Burling is ineligible for the Earned Release or Incarceration 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 summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Diane M. Fremgen
Clerk of Court of Appeals