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December 4, 2015

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

2014AP2003-CRNM State of Wisconsin v. James H. Luke (L.C. # 2013CF301)

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

Attorney Jason Farris, appointed counsel for James Luke, 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 Luke's plea or the sentence imposed by the circuit court. Luke was provided a copy of the no-merit report, but has not filed a response. Upon independently

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

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

Luke was charged with one count of battery by prisoner. Pursuant to a plea agreement, Luke pled no contest to the charged crime, and the State agreed to cap its sentencing recommendation at eighteen months of initial confinement and eighteen months of extended supervision. The circuit court sentenced Luke to three years of initial confinement and three years of extended supervision, consecutive to any other sentence.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Luke'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 mandatory duties to personally address Luke and establish such information as Luke's understanding of the nature of the charge, 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 Luke's plea would lack arguable merit.

Next, the no-merit report addresses whether a challenge to Luke's sentence would have arguable merit. Our review of a sentence determination begins "with the presumption that the [circuit] court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." ***State v. Krueger***, 119 Wis. 2d 327, 336,

351 N.W.2d 738 (Ct. App. 1984). The record establishes that Luke was afforded the opportunity to address the circuit court prior to sentencing. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Luke's character and criminal history, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The court sentenced Luke to three years of initial confinement and three years of extended supervision, to be served consecutive to any other sentence. The sentence was within the maximum Luke faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See* ***State v. Stenzel***, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances" (quoted source omitted)). Additionally, the court granted the undisputed restitution request and ordered no sentence credit on counsel's stipulation. 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 affirmed pursuant to WIS. STAT. RULE 809.21.

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

Diane M. Fremgen
Clerk of Court of Appeals