OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I/IV

December 8, 2015

To:

Hon. Dennis P. Moroney
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

John Richard Breffeilh
Assistant State Public Defender
735 N. Water St., Ste. 912
Milwaukee, WI 53202-4105

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Howard Louis Mayfield IV 275704
Kettle Moraine Corr. Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2014AP2546-CRNM State of Wisconsin v. Howard Louis Mayfield, IV
(L.C. # 2012CF6021)

Before Higginbotham, Sherman and Blanchard, JJ.

Attorney John Breffeilh, appointed counsel for Howard Mayfield, 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 Mayfield's plea or the sentence imposed by the circuit court, or to the court's order denying Mayfield's postconviction motion for sentence

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

modification. Mayfield was provided a copy of the no-merit report, but has not filed a response. Upon independently 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.

Mayfield was charged with one count of robbery by use of force. Pursuant to a plea agreement, Mayfield pled guilty to an amended charge of theft from person, with the State to recommend five years of initial confinement and five years of extended supervision. The court sentenced Mayfield to four years of initial confinement and four 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 Mayfield'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, together with the plea questionnaire and waiver of rights form Mayfield signed, satisfied the court's mandatory duties to personally address Mayfield and establish such information as Mayfield'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 Mayfield's plea would lack arguable merit.

Next, the no-merit report addresses whether a challenge to Mayfield'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 Mayfield was afforded the opportunity to address the 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, Mayfield'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 sentence was within the maximum Mayfield 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 restitution as stipulated by the parties. We discern no erroneous exercise of the court's sentencing discretion.

Finally, we agree with the no-merit report that a challenge to the circuit court's exercise of discretion in denying Mayfield's postconviction motion for sentence modification would lack arguable merit. *See* ***State v. Harbor***, 2011 WI 28, ¶¶36-38, 333 Wis. 2d 53, 797 N.W.2d 828 (circuit court's decision on sentence modification is reviewed for erroneous exercise of discretion). Because the circuit court provided a reasonable explanation for its determination that the alleged new factor would not have justified a lesser sentence, it would be wholly

frivolous to argue that the circuit court erred by denying sentence modification. ***Id.***, ¶38 ("[I]f the court determines that in the exercise of its discretion, the alleged new factor would not justify sentence modification, the court need not determine whether the facts asserted by the defendant constitute a new factor as a matter of law.").

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 and order are affirmed pursuant to WIS. STAT. RULE 809.21.

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

Diane M. Fremgen
Clerk of Court of Appeals