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DISTRICT IV

December 17, 2015

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

2014AP1224-CRNM State of Wisconsin v. Bobby G. Hogans (L.C. #2012CF1280)

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

Bobby G. Hogans appeals from a judgment of conviction for felony murder. Attorney Steven Wright, appointed counsel for Hogans, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Hogans with a copy of the report, and both counsel and this court advised him of his right to file a response. Hogans, who cannot read, responded by asking his appointed counsel to convey to

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

the court by letter that he objects only to the length of the incarceration part of his sentence. Upon consideration of the report and an independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report addresses whether Hogan's plea was entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of *State v. Bangert*, 131 Wis. 2d 246, 255-73, 389 N.W.2d 12 (1986) and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Hogans was waiving, and other matters. After Hogans told the circuit court that he could not read, the circuit court confirmed with Hogans and with counsel that the plea documents had been read to him and that he understood them. The record shows no ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report addresses whether the sentence is within the legal maximum and whether the circuit court erroneously exercised its sentencing discretion. Hogans' response to the no-merit report via counsel was that he believes the 15-year incarceration portion of his sentence is unfair and excessive. The standards for the circuit court and this court on sentencing issues are well established. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. A sentence is unduly harsh "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." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). In this case, the court considered appropriate factors such as the gravity of the offense, the need for the protection of the public, Hogans' character, his need for rehabilitation, his age, education and lack of an employment record, his expressions of remorse, and his cooperation with the State. Felony murder results in

a maximum sentence of 15 years above the maximum for the underlying offense. *See* WIS. STAT. § 940.03. In this case the underlying charge was armed robbery, a Class C felony, which has a maximum sentence of 40 years. *See* WIS. STAT. §§ 943.32(2), 939.50(3)(c). Thus, the maximum sentence for the charge of which Hogans was convicted was 55 years.² *See* WIS. STAT. § 973.01(2)(d). Hogans was sentenced to 15 years' incarceration and 15 years' extended supervision. In view of his conduct, this sentence cannot be said to "shock public sentiment." *See Ocanas*, 70 Wis. 2d at 185. The court did not consider improper factors, and it reached a reasonable result. There is no arguable merit to this issue.

Our review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Diane M. Fremgen
Clerk of Court of Appeals

² At sentencing, a discussion ensued regarding how the felony murder conviction affected calculation of Hogans' maximum initial confinement and extended supervision; however, as both parties conceded, the circuit court was correct that it did not matter in this case as all recommendations fell far short of the maximum. *See State v. Mason*, 2004 WI App 176, ¶10, 276 Wis. 2d 434, 687 N.W.2d 526 (holding that felony murder is a stand-alone unclassified crime such that the felony murder maximum sentence is calculated as prescribed by statute, and the maximum initial confinement under WIS. STAT. § 973.01(2)(d) is 75% of that total).