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DISTRICT IV

January 12, 2016

To:

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

2015AP459-CRNM State of Wisconsin v. Roy B. Ismert (L.C. # 2013CF297)

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

Attorney William Schmaal, appointed counsel for Roy Ismert, 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 the circuit court's finding that Ismert was competent to proceed, or to Ismert's plea or sentencing. Ismert was sent a copy of the report, but has not filed a

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

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.

Ismert was charged with operating with a restricted controlled substance in his blood, 7th, 8th or 9th offense, and felony bail jumping. On March 11, 2014, the circuit court found Ismert incompetent to proceed and ordered Ismert committed for treatment. On August 8, 2014, the court found that Ismert had regained competency to proceed. Ismert then pled guilty to operating with a controlled substance, 7th, 8th or 9th offense, pursuant to a plea agreement under which the bail jumping charge was dismissed but read-in for sentencing purposes. The court sentenced Ismert to three years 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 circuit court's finding that Ismert had regained competency to proceed in August 2014. *See* WIS. STAT. § 971.13(1). On our review of the record, including the competency evaluations and competency hearings, we agree with counsel's assessment that a challenge to the circuit court's finding would lack arguable merit. *See* ***State v. Byrge***, 2000 WI 101, ¶¶44-45, 237 Wis. 2d 197, 614 N.W.2d 477.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Ismert'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, together with the plea questionnaire and waiver of rights form that Ismert signed, satisfied the court's mandatory duties to personally

address Ismert and determine information such as Ismert's understanding of the 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, 30, 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 Ismert's plea would lack arguable merit.

Finally, the no-merit report addresses whether there would be arguable merit to a challenge to Ismert's 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, Ismert'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 applicable penalty range 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 Ismert 150 days of sentence credit, on counsel's stipulation. The court exercised its discretion to impose the DNA surcharge, explaining that it did so to aid in deterrence and rehabilitation. 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 Schmaal is relieved of any further representation of Ismert in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals