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DISTRICT IV

April 13, 2016

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

2015AP985-CRNM State of Wisconsin v. Douglas G. Krause (L.C. # 2014CF300)

Before Higginbotham, Sherman and Blanchard, JJ.

Attorneys Andrew Hinkel and Sara Kelton Brelie, appointed counsel for Douglas Krause, have 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 decision denying Krause's suppression motion or to Krause's plea or sentencing. Krause was sent a copy

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

of the 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.

Krause was charged with operating while intoxicated and operating with a prohibited alcohol concentration, both as a seventh offense, failure to install an ignition interlock device, and operating after a revocation based on an alcohol-related offense. Krause moved to suppress evidence police obtained when Krause was stopped walking along a highway about a mile and a half from a recent one-car accident. Krause argued that police lacked reasonable suspicion for the stop. The circuit court denied the suppression motion. Pursuant to a plea agreement, Krause pled no-contest to operating with a prohibited alcohol concentration, seventh offense. The State dismissed the operating while intoxicated charge and the remaining charges were dismissed and read-in for sentencing purposes. The court sentenced Krause to three years of initial confinement and three years of extended supervision in this case, consecutive to another sentence Krause was currently serving, plus a $3810 fine.

The no-merit report addresses whether there would be arguable merit to a challenge to the circuit court's decision to deny Krause's suppression motion. At the suppression hearing, the arresting officer testified that the officer stopped Krause after observing Krause walking with traffic along the side of the highway. The court relied on that testimony to find that police had reasonable suspicion for the stop. We agree with counsel that it would be wholly frivolous to argue that the circuit court erred by finding that the stop was supported by reasonable suspicion. *See* WIS. STAT. § 346.28(1) (providing that "[a]ny pedestrian traveling along and upon a highway other than upon a sidewalk shall travel on and along the left side of the highway"); ***State v.***

Baudhuin, 141 Wis. 2d 642, 648-51, 416 N.W.2d 60 (1987) (holding that police are authorized to conduct a stop if there exist objective, articulable facts fitting a traffic law violation).

The no-merit report also addresses whether there would be arguable merit to a challenge to the validity of Krause'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 Krause and determine information such as Krause'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. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Krause's plea would lack arguable merit.

Finally, the no-merit report addresses whether there would be arguable merit to a challenge to Krause'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 severity of the offense, Krause'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 well within the maximum Krause faced, and therefore 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. 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 Attorneys Andrew Hinkel and Sara Kelton Brelie are relieved of any further representation of Douglas Krause in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals