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DISTRICT III

June 21, 2016

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

2015AP1005-CRNM State of Wisconsin v. Zachary R. Kitto
(L. C. No. 2014CF22)

Before Stark, P.J., Hruz and Seidl, JJ.

Counsel for Zachary Kitto has filed a no-merit report concluding no grounds exist to challenge Kitto's convictions for substantial battery and misdemeanor intimidation of a victim, both with a domestic abuse enhancer, and the intimidation charge as a repeater. Kitto was informed of his right to file a response to the no-merit report and has not responded. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we

conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.¹

The State charged Kitto with felony intimidation of a victim; substantial battery; and disorderly conduct, all as a repeater and all with a domestic abuse enhancer. In exchange for his no contest pleas to substantial battery and an amended charge of misdemeanor intimidation of a victim, both with a domestic abuse enhancer, and only the intimidation charge as a repeater, the State agreed to dismiss and read in the remaining charge. Out of a maximum possible five and one-half-year sentence, the circuit court imposed consecutive sentences totaling four years and two months, consisting of one year and ten months' initial confinement followed by two years and four months' extended supervision.

The record discloses no arguable basis for withdrawing Kitto's no contest pleas. The circuit court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that Kitto completed, informed Kitto of the elements of the offenses, the penalties that could be imposed, and the constitutional rights he waived by entering no contest pleas. The court confirmed Kitto's understanding that it was not bound by the terms of the plea agreement, *see State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, and found that a sufficient factual basis existed in the criminal complaint to support the conclusion that Kitto committed the crimes charged. Although the circuit court failed to advise Kitto of the deportation consequences of his pleas as mandated by WIS. STAT. § 971.08(1)(c), the no-merit report indicates Kitto is a United States citizen not subject to deportation. Any challenge to the

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

pleas on this basis would therefore lack arguable merit. The record shows the pleas were knowingly, voluntarily, and intelligently made. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

The record discloses no arguable basis for challenging the sentence imposed. Before imposing a sentence authorized by law, the circuit court considered the seriousness of the offenses; Kitto's character; the need to protect the public; and the mitigating factors Kitto raised. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court indicated it was imposing consecutive sentences because concurrent sentences would depreciate the seriousness of the offenses. It cannot reasonably be argued that Kitto's sentences are so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our independent review of the record discloses no other potential issue for appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Colleen Marion is relieved of further representing Kitto in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals