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DISTRICT II

November 30, 2016

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

2016AP1393-CRNM State of Wisconsin v. Randall S. Weber (L.C. #2015CF446)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Randall S. Weber appeals from a judgment convicting him of attempted robbery with use of force. Weber's appellate counsel 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), concluding that there are no issues of arguable merit. Weber was notified of his right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated

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

by *Anders* and RULE 809.32, we conclude that there is no arguable merit to any issue that could be raised on appeal. We summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Weber approached a woman in a parking lot as she was leaning into her car to retrieve some items. Pushing his finger into the small of her back, Weber said, “Don’t turn around or I’ll shoot you. Give me your money or I’ll shoot you.” When she turned around, Weber fled on his bicycle before she surrendered any money.

Weber was charged with one count of attempted robbery with use of force as a repeater. Pursuant to a plea agreement, he pled guilty to the charge without the penalty enhancer. The trial court sentenced him to three years’ initial confinement and two and one-half years’ extended supervision, consecutive to the revocation sentence he was serving. This no-merit appeal from the judgment of conviction² followed.

The no-merit report first considers whether Weber’s guilty plea was knowingly, intelligently, and voluntarily entered. Our review of the record satisfies us that the colloquy and procedures were appropriate in every regard.

A defendant seeking to withdraw a guilty plea after sentencing bears “the heavy burden of establishing, by clear and convincing evidence, that withdrawal of the plea is necessary to correct a manifest injustice.” *State v. McCallum*, 208 Wis. 2d 463, 473, 561 N.W.2d 707

² At sentencing, the court indicated that it believed the Department of Corrections (DOC) would deem forty-three-year-old Weber ineligible for the substance abuse program due to his age. Defense counsel said she believed he was eligible. Although the court ordered that it would authorize the treatment to the extent DOC found Weber eligible, the judgment of conviction indicated that Weber was not eligible. The judgment of conviction was amended, at defense counsel’s request, to make Weber eligible for substance abuse treatment.

(1997). A defendant can meet this burden by showing that the plea was not knowingly, intelligently, and voluntarily entered. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906.

The court ensured that Weber's plea was knowingly, intelligently, and voluntarily entered by confirming that he understood the information the court must impart. *See* WIS. STAT. § 971.08; *see also Brown*, 293 Wis. 2d 594, ¶35. Weber has not alleged that the court failed to comply with any procedural requirements or that he did not understand or know any information that was not provided but should have been. *See State v. Bangert*, 131 Wis. 2d 246, 274, 389 N.W.2d 12 (1986).

Besides the thorough colloquy, the court properly looked to Weber's signed plea questionnaire/waiver of rights form. *See State v. Hoppe*, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. He indicated no confusion, agreed that a factual basis supported the plea, and acknowledged that the court was not bound by any sentencing recommendation. *See State v. Hampton*, 2004 WI 107, ¶¶20, 23, 274 Wis. 2d 379, 683 N.W.2d 14. No issue of arguable merit could arise from this point.

The no-merit report also addresses whether there exists any basis on which to challenge the sentence imposed. The court considered the gravity of the offense, the character of the defendant, and the need to protect the public. *State v. Harris*, 2010 WI 79, ¶28, 326 Wis. 2d 685, 786 N.W.2d 409. It also considered Weber's history of criminal offenses and undesirable behavior pattern; his personality, character, and social traits; the presentence investigation report; the frightening nature of the crime and its impact on the victim; Weber's culpability; his age, educational background, employment record, remorse, repentance, cooperativeness, and need for

close rehabilitative control; and the rights of the public. *See State v. Gallion*, 2004 WI 42, ¶43 n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The court weighed these sentencing factors, applied them in a reasoned and reasonable manner, and provided a thorough and rational explanation for imposing the sentence it did. *See id.*, ¶¶39-40. It also explained why it ordered his sentence to be served consecutively to his revocation sentence. *See State v. Ramuta*, 2003 WI App 80, ¶24, 261 Wis. 2d 784, 661 N.W.2d 483 (“Whether to impose consecutive, as opposed to concurrent, sentences is, like all other sentencing decisions, committed to the trial court’s discretion.”). We see no basis to disturb the sentence imposed.

Our review of the record confirms counsel’s conclusion that these potential issues lack arguable merit and discloses no further potential issues for appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Megan Sanders-Drazen is relieved of any further representation of Randall S. Weber on this appeal.

Diane M. Fremgen
Clerk of Court of Appeals