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DISTRICT II

February 15, 2017

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

2016AP2161-CRNM State of Wisconsin v. Ryder J. Klaassen (L.C. # 2015CF491)

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

Ryder J. Klaassen appeals from a judgment of conviction for armed robbery and felony bail jumping and from an order denying his postconviction motion to be found eligible for the Challenge Incarceration Program (CIP). His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)¹ and *Anders v. California*, 386 U.S. 738 (1967). Klaassen received a copy of the report, was advised of his right to file a response, and has elected

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21. However, the judgment of conviction erroneously indicates that two counts charged in this case were dismissed as read-ins at sentencing. We remand with directions for entry of an amended judgment of conviction to properly reflect that those two counts were dismissed outright.

On August 30, 2015, Klaassen disguised himself, entered a hotel, pointed a handgun at the front desk clerk, and demanded money. He stole approximately \$295 in cash. After his arrest, Klaassen admitted that he committed the crime after planning it with others and that the gun he displayed was a BB gun. Klaassen was charged with armed robbery, felony bail jumping, felony bail jumping as a party to the crime, and misdemeanor theft. He entered a no contest plea to armed robbery and felony bail jumping and the other two counts were dismissed outright.² As part of the plea agreement, charges pending against Klaassen in two other cases were dismissed as read-ins. Klaassen was sentenced to five years' initial confinement and five years' extended supervision on the armed robbery conviction, five years' consecutive probation on the bail jumping conviction, and ordered to pay restitution to the hotel clerk and to victims of the dismissed and read-in charges in the other cases. Klaassen filed a postconviction motion requesting a determination about his eligibility for CIP and the Substance Abuse Program (SAP). At the hearing on the motion, the circuit court found Klaassen eligible for the SAP but denied

² The judgment of conviction shows that the two counts were dismissed as read-ins. That is a clerical mistake. The recitation of the plea agreement was that the two counts would be dismissed outright. At the end of the plea hearing, the circuit court stated that the two counts were dismissed outright. On remand, an amended judgment of conviction should be entered reflecting that no charges were dismissed as read-ins in this case.

eligibility for the CIP as early release under that program would unduly depreciate the seriousness of the crime.

The no-merit report addresses the potential issues of whether Klaassen's plea was freely, voluntarily and knowingly entered and whether the sentence was the result of an erroneous exercise of discretion. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further. Additionally, the circuit court properly exercised its discretion at the postconviction hearing in determining Klaassen's eligibility for SAP and CIP. There is no arguable merit to a claim that denying CIP eligibility was an erroneous exercise of discretion.

The no-merit report correctly notes that the misdemeanor theft charge was a lesser included offense of the armed robbery charge and had no independent factual basis. It appears that Klaassen could not have been convicted of the felony bail jumping as a party to the crime and misdemeanor theft charges.³ This raises the question of whether one of the perceived benefits of the plea agreement—having those two counts dismissed—was illusory. *See State v. Dillard*, 2014 WI 123, ¶69, 358 Wis. 2d 543, 859 N.W.2d 44 (“the defendant entered into the plea agreement without knowing the actual value of the State's plea offer and relying on misinformation from the court, the State, and trial counsel about the applicability of the persistent repeater enhancer”); *State v. Denk*, 2008 WI 130, ¶¶65, 78, 315 Wis. 2d 5, 758 N.W.2d 775 (rejecting the defendant's claim that his plea was unknowing and involuntary because the benefit of having a charge that he could not be convicted of dismissed was illusory).

³ Klaassen was subject to a bond in only one of the other two cases pending against him at the time the armed robbery was committed.

The no-merit report indicates that appointed counsel informed Klaassen that he could not have been found guilty of the two dismissed counts and that Klaassen indicated he was aware of that information at the time he pled guilty. Klaassen has not contested the representation in the no-merit report. Thus, it appears that Klaassen could not establish that he did not know the actual value of the agreed upon dismissal of those two counts. There is no arguable merit to a claim that the benefit of the plea agreement was illusory.

Our review of the record discloses no other potential issues for appeal.⁴ Accordingly, this court accepts the no-merit report, affirms the conviction and order, discharges appellate counsel of the obligation to represent Klaassen further in this appeal, and remands with directions.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction and order are summarily affirmed and the cause remanded with directions. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Timothy T. O’Connell is relieved from further representing Ryder J. Klaassen in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

⁴ Any other possible appellate issues from the proceedings before entry of the plea are waived because Klaassen’s no contest plea waived the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.