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DISTRICT III

April 18, 2017

To:

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

2016AP1176-CRNM State of Wisconsin v. Derryk J. Clark
(L. C. No. 2014CM556)

Before Stark, P.J.¹

Counsel for Derryk Clark has filed a no-merit report concluding no grounds exist to challenge Clark's misdemeanor conviction for battery (domestic abuse). Clark was informed of his right to file a response to the no-merit report and has not responded. Upon an independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), this court

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

The State charged Clark with misdemeanor battery and disorderly conduct, both as domestic abuse, arising from a dispute between Clark and his girlfriend. In exchange for his no-contest plea to the battery charge, the State agreed to dismiss and read in the remaining count and recommend that the court defer entry of judgment. The circuit court accepted Clark's no-contest plea and found him guilty, but deferred entry of judgment for one year, during which Clark had agreed to complete programming, community service, and counseling. The deferred entry of judgment agreement was subsequently revoked and the matter proceeded to sentencing. Out of a maximum possible nine-month sentence, the circuit court withheld sentence and imposed one year of probation, consistent with the parties' joint recommendation.

The record discloses no arguable basis for withdrawing Clark's no-contest plea. The circuit court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form that Clark completed, informed Clark of the elements of the offense, the penalties that could be imposed, and the constitutional rights he waived by entering a no-contest plea. The court confirmed that Clark understood the court 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 advised Clark of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). Clark confirmed that treatment he was receiving for mental illness did not interfere with his ability to understand the proceedings. Additionally, the court properly found that a sufficient factual basis existed in the criminal complaint to support the conclusion that Clark committed the crime charged. The record shows the plea was knowingly, voluntarily and intelligently made. *See State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

There is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. Where a defendant affirmatively joins or approves a sentence recommendation, the defendant cannot attack the sentence on appeal. *State v. Scherriecks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). Here, the court sentenced Clark consistent with the joint recommendation. In any event, it cannot reasonably be argued that Clark's sentence is so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

An 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 Tristan S. Breedlove is relieved of further representing Clark in this matter. See WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals