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May 10, 2017

To:

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

2016AP2496-CRNM State of Wisconsin v. Kerry Laronzo Shack (L.C. # 2015CF3322)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Kerry Laronzo Shack appeals from a judgment convicting him of second-degree sexual assault. Shack's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)¹ and *Anders v. California*, 386 U.S. 738 (1967).² Shack received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the

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

² The no-merit report was filed by attorney John R. Breffelh, who has been replaced by attorney Christopher P. August as Shack's appellate counsel.

record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. RULE 809.21.

In March 2016, Shack pled guilty to one count of second-degree sexual assault. The charge stemmed from allegations that he physically attacked his former girlfriend at her home and forced her to perform fellatio on him.

Prior to sentencing, Shack moved to withdraw his guilty plea. Following a brief hearing on the matter, the circuit court denied the motion. It subsequently sentenced Shack to fifteen years of initial confinement followed by ten years of extended supervision. It also ordered him to pay \$285 in restitution to the victim for property damaged or lost due to the assault. This no-merit appeal follows.

The no-merit report addresses whether Shack's guilty plea was knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Shack that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In addition, a signed plea questionnaire and waiver of rights form was entered into the record, along with an attachment detailing the elements of the offense. We agree with counsel that a challenge to the entry of Shack's guilty plea would lack arguable merit.

The no-merit report also addresses whether the circuit court properly denied Shack's motion to withdraw his guilty plea. The decision to grant or deny such a motion rests within the sound discretion of the circuit court. *State v. Jenkins*, 2007 WI 96, ¶29, 303 Wis. 2d 157, 736 N.W.2d 24. Here, Shack moved for plea withdrawal on the ground that he was actually innocent. However, he did not provide the circuit court with evidence of his innocence or

explain why, despite his innocence, he entered his plea. A claim of innocence, without more, is not a “fair and just reason” for presentence plea withdrawal. *See State v. Harvey*, 2006 WI App 26, ¶23, 289 Wis. 2d 222, 710 N.W.2d 482. Accordingly, we agree with counsel that a challenge to the court’s decision denying the motion to withdraw would lack arguable merit.

Finally, the no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the court’s sentencing decision had a “rational and explainable basis.” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In making its decision, the court considered the seriousness of the offense, Shack’s character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Shack’s lengthy prior record, the sentence imposed does not “shock public sentiment and violate the judgment of reasonable people concerning what is right and proper.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). The record also supports the court’s exercise of discretion in ordering restitution. *See State v. Madlock*, 230 Wis. 2d 324, 329, 602 N.W.2d 104 (Ct. App. 1999) (a request for restitution is addressed to the circuit court’s discretion). Consequently, we agree with counsel that a challenge to Shack’s sentence would lack arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Christopher P. August of further representation in this matter.

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 Christopher P. August is relieved of further representation of Shack in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited under WIS. STAT. RULE 809.23(3)(b).

Diane M. Fremgen
Clerk of Court of Appeals