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DISTRICT II

May 17, 2017

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

2016AP321-CRNM State of Wisconsin v. Danny R. Morris (L.C. #2013CF684)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Danny R. Morris appeals from a judgment of conviction entered upon his plea to one count of armed robbery as a party to the crime, contrary to WIS. STAT. §§ 943.32(2), 939.05 (2015-16).[1] Morris's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Morris received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the no-merit report and our independent review of the record, we conclude that the judgment

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

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.

In the middle of the night, Morris and a co-defendant burglarized the victims' home, confronted the victims in bed, and demanded the victims' money. The co-defendant pointed a firearm at the male victim. While the victims were attempting to comply, Morris was accidentally shot by his co-defendant. Further investigation revealed there were at least three people involved in the robbery. Morris was ultimately charged with armed robbery, armed burglary, attempted felony theft, and misdemeanor theft, all as a party to the crime. Pursuant to a plea agreement, Morris entered an ***Alford***[2] plea to count one, and the State moved to dismiss and read in counts two, three, and four. The State agreed to cap its recommendation at ten years of initial confinement followed by ten years of extended supervision, and Morris remained free to argue. The circuit court ultimately imposed a fifteen-year bifurcated sentence, with five years of initial confinement and ten years of extended supervision. Postconviction, Morris successfully moved the court to vacate the $250 DNA surcharge reflected on his judgment.

The no-merit report addresses whether Morris's plea was freely, knowingly, and voluntarily 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 these issues as without merit.

[2] An ***Alford*** plea is a guilty or no contest plea in which the defendant either maintains innocence or does not admit to the commission of the crime. ***State ex rel. Jacobus v. State***, 208 Wis. 2d 39, 45 n.5, 559 N.W.2d 900 (1997); *see also* ***North Carolina v. Alford***, 400 U.S. 25 (1970). Trial counsel stated that Morris was pleading ***Alford*** because he could not recall the criminal incident due to his gunshot injuries. The gunshot permanently paralyzed Morris, who is now confined to a wheelchair.

The trial court engaged in an appropriate plea colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1), ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Additionally, the circuit court properly relied upon Morris's signed plea questionnaire to establish his knowledge and understanding of his plea. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794; ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Before accepting Morris's ***Alford*** plea, the circuit court found there was "very strong evidence as to [Morris's] guilt and [his] involvement as being a party to this crime." *See* ***State v. Smith***, 202 Wis. 2d 21, 27-28, 549 N.W.2d 232 (1996) (with an ***Alford*** plea, there must be strong proof of guilt as to each element of the crime). Here, the court cited its familiarity with the evidence in a co-defendant's case, the undisputed fact that Morris was shot during the incident, and the plethora of evidence concerning his removal from the scene and arrival at the hospital, the stolen items recovered from the car, and the allegations in the criminal complaint. The circuit court found a factual basis for the crime of conviction. No issue of merit exists from the plea taking.

In fashioning the sentence, the court considered the seriousness of the offense, the defendant'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. The court emphasized the extreme severity of the incident which it characterized as "an aggravated assault on the very fabric of all those things we hold dear by some masked men in the dead of the night." In terms of Morris's character, the court considered his prior record and poor history on supervision but acknowledged that Morris had since sustained "an absolutely life-changing injury." The court determined that despite Morris's injury, a prison sentence was necessary due to "the horrendous nature of the crime itself." The

court explained: "The nature of what happened cannot be reconciled with probation even under the circumstances of Mr. Morris's debilitating tragic injury. There is a need for a punishment that goes beyond the need to protect the public from future abuses by Mr. Morris." The court further determined that "an unduly lengthy prison sentence would be extraordinarily harsh under the circumstance and the limitations that Mr. Morris has." The sentence was a demonstrably proper exercise of discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶41, 270 Wis. 2d 535, 678 N.W.2d 197 (the court is to identify the general objective of most import). Further, we cannot conclude that the fifteen-year sentence when measured against the possible maximum of forty years is so excessive or unusual as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our review of the record discloses no other potential issues for appeal.[3] Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to further represent Morris in this appeal. Therefore,

[3] Morris's plea forfeited the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. ***State v. Kelty***, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886. In terms of potential financial consequences, Morris was only ordered to pay court costs. The victims withdrew their restitution request and none was ordered.

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Timothy T. O'Connell is relieved from further representing Danny R. Morris in this matter. *See* WIS. STAT. RULE 809.32(3).

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