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June 28, 2017

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

2016AP1597-CRNM State of Wisconsin v. Terry Jackson (L.C. # 2014CF184)

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

Terry Jackson appeals from a judgment convicting him of several crimes. Jackson'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). Jackson filed a response. After reviewing the record, counsel's report, and Jackson's response, we conclude that there are no issues with

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

arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

In April 2015, Jackson entered no contest pleas to (1) intimidation of a victim, (2) misdemeanor battery, and (3) disorderly conduct. The charges stemmed from several acts of domestic abuse involving his wife. Two additional charges were dismissed and read in.² The circuit court adopted the parties' joint sentencing recommendation and imposed a total of three years of initial confinement followed by four years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether Jackson's no contest pleas were knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Jackson 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 offenses. We agree with counsel that a challenge to the entry of Jackson's no contest pleas would lack arguable merit.

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). Moreover, the court's adoption of the parties' joint sentencing recommendation prevents Jackson from attacking his sentence now. See *State v. Magnuson*,

² The additional charges were (1) strangulation and suffocation and (2) disorderly conduct.

220 Wis. 2d 468, 471-72, 583 N.W.2d 843 (Ct. App. 1998) (a defendant may not attack a sentence on appeal that he or she requested). We agree with counsel that a challenge to Jackson's sentence would lack arguable merit.

As noted, Jackson filed a response to counsel's no-merit report. In it, he complains that his previous pleas of not guilty by reason of mental disease or defect (NGI) were not properly withdrawn. He also complains that his trial counsel³ failed to further investigate the possibility of NGI pleas or his competency to proceed. Finally, Jackson alleges that he did not understand the elements of the charges to which he ultimately pled no contest. We are not persuaded that these complaints present issues of arguable merit.

With respect to Jackson's first complaint, it is true that he previously entered NGI pleas to the charges against him. The circuit court ordered an examination, and the appointed psychiatrist concluded that there was insufficient evidence to support such pleas. At his subsequent plea/sentencing hearing, Jackson informed the court that he no longer wished to pursue the NGI pleas. Accordingly, the court deemed them withdrawn.⁴ No additional action

³ Jackson had two appointed trial counsel in the case. His first trial counsel filed NGI pleas before withdrawing per Jackson's request. His second trial counsel assisted him in changing his pleas to no contest. Jackson's response focuses on the actions of his second trial counsel.

⁴ At the conclusion of the plea/sentencing hearing, counsel noted that Jackson had previously filed NGI pleas and questioned whether a record needed to be made of their formal withdrawal. The circuit court believed that the entry of the no contests pleas had the effect of withdrawing the earlier NGI pleas. Nevertheless, it engaged in the following exchange with Jackson:

THE COURT: Okay. I heard your attorney ask you if you wanted to continue with an NGI, not guilty by reason of mental disease or defect plea, and you have said no; correct?

THE DEFENDANT: (Nodding head up and down).

(continued)

was required by the court before accepting the no contest pleas. *See State v. Francis*, 2005 WI App 161, ¶22, 285 Wis. 2d 451, 701 N.W.2d 632 (the circuit court has no obligation to engage in a personal colloquy before allowing a defendant to abandon an NGI plea).

With respect to Jackson's second complaint, there was no reason for his trial counsel to further investigate the possibility of NGI pleas or his competency to proceed. Jackson expressed no interest in pursuing the NGI pleas, as evidenced by his exchange with the circuit court. Furthermore, there was no reason to doubt his competency to proceed. Neither he nor counsel ever raised the issue of competency in the circuit court. There is no indication in the record that Jackson did not understand the proceedings or that his decision-making ability at the time of his no contest pleas was compromised in any way.

Finally, with respect to Jackson's third complaint, the circuit court verified that he was aware of the elements of the charges against him by referring to the plea questionnaire and attachment containing them. Jackson confirmed that he had gone over those documents with his attorney. He further confirmed that he understood their contents. There was no reason to doubt these confirmations, as Jackson was a high school graduate with prior experience in the criminal justice system. The court then engaged in the following exchange with Jackson, which effectively forecloses his argument:

THE COURT: Your attorney has gone over with you the elements of those three crimes you're pleading to so you know what the state would have to prove?

THE DEFENDANT: I understand, your Honor.

THE COURT: Okay. And with you saying no and the basis of the psychiatric report, the NGI plea is withdrawn.

THE COURT: Would you like me to go over those elements with you?

THE DEFENDANT: Not at all. Not at all.

THE COURT: You understand them?

THE DEFENDANT: Yes.

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 Jason R. Farris 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 Jason R. Farris is relieved of further representation of Jackson in this matter.

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

Diane M. Fremgen
Clerk of Court of Appeals