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DISTRICT II

July 19, 2017

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

2016AP1229-CRNM State of Wisconsin v. Michael B. Held (L.C. #2015CF82)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Michael B. Held appeals from a judgment of conviction for fifth offense operating while under the influence of an intoxicant (OWI) and obstructing an officer. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),¹ and *Anders v.*

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

California, 386 U.S. 738 (1967). Held received a copy of the report, was advised of his right to file a response, and after obtaining four extensions of the time to file a response, has not filed a response. 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.

Around 11:15 p.m. on February 20, 2015, Held's vehicle ended up in a snow-filled ditch. An officer happened upon the crash just as Held was walking away from the vehicle. The officer yelled to Held to stop and come and talk with him, but Held did not stop. The officer pursued and eventually the foot chase was ended when the officer deployed his taser. The officer noted a strong odor of intoxicants on Held's breath. Because of the weather conditions, Held was taken to a fire station and field sobriety tests conducted. Held was charged with fifth offense OWI, fifth offense operating a motor vehicle with a prohibited blood alcohol level, and misdemeanors of operating after revocation and obstructing an officer. Pursuant to a plea agreement, he entered a guilty plea to OWI and obstructing an officer. The other two charges were dismissed as read-ins at sentencing. The plea agreement left both sides free to argue for an appropriate sentence. Held was sentenced to eighteen months' initial confinement and three years' extended supervision on the OWI conviction, and a concurrent nine month jail term on the obstructing conviction.

The no-merit report addresses the potential issues of whether Held'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.² Further, we cannot conclude that the sentence is so excessive or unusual so 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 conviction and discharges appellate counsel of the obligation to represent Held further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Kiley Zellner is relieved from further representing Michael B. Held in this appeal. *See* WIS. STAT. RULE 809.32(3).

² During the plea colloquy the deportation warning required by WIS. STAT. § 971.08(1)(c), was not given. The no-merit report incorrectly states that the warning required by § 971.08(1)(c) is not pertinent here because it is a warning that must only be given to “non-citizens.” Section 971.08(1)(c) does not contain any language restricting its application only to non-citizens. Further, under WIS. STAT. § 971.06(3), the circuit court may not require a defendant to disclose his or her citizenship status. Thus, the warning must be given in every case.

Here the failure to give the warning does not give rise to a meritorious claim for plea withdrawal. The presentence investigation report lists Held’s birthplace as Wisconsin. The failure to give the warning is not a ground for relief because there is no suggestion that Held could show that his plea is likely to result in deportation. *See State v. Douangmala*, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1.

³ Any other possible appellate issues from the proceedings before entry of the plea are waived because Held’s guilty 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.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals