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DISTRICT II

October 4, 2017

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

2017AP944-CRNM State of Wisconsin v. Richard W. Turner (L.C. #2016CF641)

Before Gundrum, J.[1]

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).

Richard W. Turner appeals from a judgment convicting him of misdemeanor battery as acts of domestic abuse and as a repeater. Turner's appellate counsel has filed a no-merit report

[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.

pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Turner has filed a response. Upon consideration of the no-merit report, the response, and an independent review of the record as mandated by ***Anders*** and RULE 809.32, we summarily affirm the judgment because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

While on extended supervision after a battery and theft-from-a-person conviction, Turner repeatedly punched and hit his girlfriend on two occasions, threatened to kill her, and would not let her leave. He was charged with false imprisonment, a felony, two counts of misdemeanor battery, and two counts of misdemeanor disorderly conduct, all as acts of domestic abuse and as a repeater. His supervision was revoked, and he was reconfined for about twenty-one months.

Turner entered guilty pleas to the two counts of misdemeanor battery. In exchange, the State agreed to dismiss outright the false imprisonment charge and to dismiss and read in the two disorderly conduct charges. At sentencing, Turner's girlfriend recanted the battery allegations, but the court rejected her new claims as inconsistent with photographic evidence of her injuries, and thus less credible than her statements to police. The court sentenced Turner to eighteen months' confinement and six months' extended supervision on one count, and twelve months' confinement and six months' extended supervision on the second, consecutive to each other and to his reconfinement term. The court also assessed a domestic abuse and DNA surcharge on each of the two counts.

This no-merit appeal followed. The report considers whether: (1) Turner's guilty pleas were knowingly, voluntarily, and intelligently entered and were supported by a factual basis and (2) there would be any arguable merit in challenging the sentences imposed. Being satisfied

upon review of the record that the no-merit report properly analyzes the issues it raises, this court will not discuss them further.

Turner argues in his response that he wishes either to withdraw his plea and be tried by a jury or have his sentence modified because: (1) the judge who accepted his plea and sentenced him is biased against persons charged with domestic violence, as a relative of the judge allegedly was the victim of similar crimes; (2) the court erroneously rejected the recantations of Turner's girlfriend, now wife; (3) despite being "honestly innocent," he pled guilty only because he was afraid of being convicted and sentenced on all five charges, as "this is a woman's state"; and (4) his sixteen-month-old daughter "needs her daddy home to help raise her." This court concludes that none of Turner's issues have arguable merit.

A defendant wishing to withdraw a plea of guilty must show by clear and convincing evidence that withdrawal is necessary to correct a manifest injustice. ***State v. James***, 176 Wis. 2d 230, 236-37, 500 N.W.2d 345 (Ct. App. 1993). "A 'manifest injustice' occurs where a defendant makes a plea involuntarily or without knowledge of the consequences of the plea—or where the plea is 'entered without knowledge of the charge or that the sentence actually imposed could be imposed.'" ***Id.*** at 237 (citation omitted). Turner has not shown that plea withdrawal is necessary to correct a manifest injustice. Further, Turner's plea reversed the presumption of innocence. *See* ***State v. Koerner***, 32 Wis. 2d 60, 67, 145 N.W.2d 157 (1966). He has raised no issue that merits a reexamination of his guilt or shown that the issues he raises contributed to his decision to plead guilty.

A court may modify a sentence to correct a void or illegal sentence, to account for the existence of a new factor, or to address a sentence that is unduly harsh or unconscionable. *See*

State v. Harbor, 2011 WI 28, ¶35 & n.8, 333 Wis. 2d 53, 797 N.W.2d 828. A motion for sentence modification under WIS. STAT. § 973.19(1)(a) must be brought within ninety days of sentencing. While a motion for sentence modification based on a new factor can be brought at any time, it too must be brought in the circuit court. *See* ***State v. Noll***, 2002 WI App 273, ¶¶11-12, 258 Wis. 2d 573, 653 N.W.2d 895.

Turner took neither avenue, and does not develop an argument in support of sentence modification. In any event, this court can review only the sentence imposed. As noted, we agree with counsel's analysis and conclusion that no arguably meritorious challenge to the sentence could be sustained.

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 Suzanne L. Hagopian is relieved from further representing Turner in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

Diane M. Fremgen
Clerk of Court of Appeals