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DISTRICT II

December 27, 2017

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

2017AP1804-CRNM State of Wisconsin v. Curtis J. Zeller (L.C. # 2016CF46)

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

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).

Curtis J. Zeller appeals from a judgment of conviction and an order denying his postconviction motion. Zeller'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). Zeller received a copy

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

of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment and order. WIS. STAT. RULE 809.21.

Zeller was convicted following a guilty plea to burglary of a building or dwelling as a repeater. The charge stemmed from his break-in of a home in Mequon, where he stole a variety of property. The circuit court imposed a sentence of three years of initial confinement and two and one-half years of extended supervision.

Zeller subsequently filed a postconviction motion requesting the circuit court to find him eligible for the Challenge Incarceration Program. After a hearing on the matter, the circuit court denied Zeller's motion and entered an order stating the same. This no-merit appeal follows.

The no-merit report addresses whether Zeller's guilty plea was knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Zeller 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. The court referred to those when discussing the rights Zeller was giving up by entering his plea and the nature of the crime. This was permissible under *State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). We agree with counsel that a challenge to the entry of Zeller's guilty plea 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). In making its decision, the court considered the seriousness of the offense, Zeller’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 Zeller’s extensive criminal 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). We agree with counsel that a challenge to Zeller’s sentence would lack arguable merit.

Finally, the no-merit report addresses whether the circuit court properly denied Zeller’s postconviction motion, which requested a finding of eligibility for the Challenge Incarceration Program. A defendant’s eligibility for the Challenge Incarceration Program is committed to the circuit court’s discretion. *See* WIS. STAT. § 973.01(3m). Here, the court reasonably concluded that the program was inappropriate for Zeller. We agree with counsel that a challenge to the court’s decision 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 Catherine R. Malchow of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Catherine R. Malchow is relieved of further representation of Zeller in this matter.

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

Diane M. Fremgen
Clerk of Court of Appeals