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DISTRICT IV

December 21, 2017

To:

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Circuit Court Judge, Branch II
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B. M. J.

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

2017AP819-NM

In the interest of B. M. J., a person under the age of 17: State of Wisconsin v. B. M. J. (L.C. # 2015JV21B)

Before Sherman, 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).

Attorney Matthew Lynch, counsel for B.M.J., has filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding that no grounds exist for challenging the order adjudicating him delinquent. B.M.J. was informed of his right to file a response and has not responded. Upon this court's independent review of the record as mandated by *Anders v. California*, 386 U.S. 738

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

(1967), I agree that there would be no arguable merit to any issue on appeal. Therefore, the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

In March 2016, the State filed a delinquency petition against B.M.J. alleging two counts of operating a motor vehicle without the owner's consent and three counts of misdemeanor theft, all as a party to a crime, after B.M.J. was involved with the theft of two trucks from the parking lot of a towing company. The juvenile court adjudicated B.M.J. delinquent on the three counts of misdemeanor theft, after B.M.J. entered no contest pleas. The court adopted a joint recommendation for one year of intensive supervision with placement at home, and ordered restitution in the amount of \$4,011.33, plus a ten percent victim/witness surcharge, totaling \$4,412.46.

There would be no arguable merit to challenging B.M.J.'s pleas on appeal. WISCONSIN STAT. § 938.30(8) requires the circuit court to determine that B.M.J.'s pleas were made voluntarily with an understanding of the nature of the acts alleged in the petition and the potential dispositions, determine that no threats or promises were made to elicit the pleas, and establish that there was a factual basis for the pleas. The court conducted a colloquy with B.M.J. to ascertain that he understood the elements of the offenses, the constitutional rights being waived, and the potential disposition. B.M.J. stipulated, through his counsel, that the petition established a factual basis for the pleas. B.M.J. stated that he was satisfied with his legal representation, and there is nothing in the no-merit report or the record giving rise to an arguably meritorious claim for ineffective assistance of counsel. Additionally, B.M.J. completed a plea questionnaire and waiver of rights form which supports the conclusion that he entered valid pleas. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987)

(questionnaire is competent evidence of a knowing and voluntary plea). Accordingly, any challenge to B.M.J.'s pleas on appeal would be without arguable merit.

There also would be no arguable merit to a claim that the circuit court erroneously exercised its discretion at disposition. B.M.J. was given a chance to comment on and make corrections to the dispositional report that was filed with the court. The court adopted a joint recommendation for one year of intensive supervision with placement at home. Where a defendant affirmatively joins or approves a dispositional recommendation, the defendant cannot attack the disposition on appeal. *See State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989).

Turning to the issue of restitution, I agree with counsel that there would be no arguable merit to challenging the circuit court's restitution determination on appeal. WIS. STAT. § 973.20(1r) states that a court "shall order the defendant to make ... restitution ... to any victim of a crime considered at sentencing. " When the circuit court has the authority to order restitution for a loss, its decision to order restitution in a particular amount is discretionary. *State v. Holmgren*, 229 Wis. 2d 358, 366, 599 N.W.2d 876 (Ct. App. 1999). In determining the proper amount of restitution, the court shall consider: (1) the amount of the victim's loss; (2) the defendant's financial resources; (3) the present and future earning ability of the defendant; (4) the needs and earning ability of the defendant's dependents; and (5) any other appropriate factors. *State v. Fernandez*, 2009 WI 29, ¶22 n.20, 316 Wis. 2d 598, 764 N.W.2d 509.

In this case, the victim was a towing company. The record reflects that the court considered B.M.J.'s ability to pay and his earning potential, ultimately finding that he was capable of holding a part-time job while completing high school and that he had a present and

future earning capacity to contribute toward paying restitution. Documentation introduced into evidence at the restitution hearing showed that the towing company had incurred \$1,055.01 in towing costs, damages, and repairs for the trucks that were stolen from its lot. Documentation was also introduced into evidence showing the cost for material and services totaling \$2,956.32 for the installation of a security camera and lights to prevent future theft.

Both the State and defense counsel submitted written statements to the court regarding the issue of whether restitution should be ordered for the costs of the security camera and lights. The court considered the arguments of both parties and concluded that the costs were compensable as an item of special damages under WIS. STAT. § 973.20(5)(a), which authorizes a court to order that a defendant pay “all special damages, but not general damages, substantiated by evidence in the record, which could be recovered in a civil action against the defendant for his or her conduct in the commission of a crime considered at sentencing.” The court’s restitution decision reflects that the court logically interpreted the relevant facts, applied a proper legal standard and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *See State v. Johnson*, 2002 WI App 166, ¶7, 256 Wis. 2d 871, 649 N.W.2d 284. Accordingly, I agree with counsel’s conclusion that there would be no arguable merit to challenging restitution on appeal.

An independent review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Matthew Lynch is relieved of further representation of B.M.J. in this matter pursuant to 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