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DISTRICT IV

December 26, 2017

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

2016AP1838-CRNM State of Wisconsin v. Michael J. Deterick (L.C. # 2015CF1750)
2016AP1839-CRNM State of Wisconsin v. Michael J. Deterick (L.C. # 2015CF2303)

Before Sherman, Blanchard, and Kloppenburg, 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).

Michael Deterick appeals judgments convicting him of criminal damage to property and violation of a domestic abuse restraining order, contrary to WIS. STAT. §§ 943.01(2)(d) and

813.12(8)(a) (2015-16),[1] as well as an order denying his postconviction motion. Attorney Colleen Marion has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; *see also* ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses whether the pleas were knowing, intelligent, and voluntary, and whether the circuit court properly exercised its discretion in imposing sentences and restitution. Deterick was sent a copy of the report, and has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51, 251 n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Deterick entered his pleas pursuant to a negotiated plea agreement that was presented in open court. In exchange for Deterick's pleading guilty in two separate cases to one count of felony criminal damage to property and one count of knowingly violating a domestic abuse restraining order, the State agreed to dismiss a count of felony bail jumping. The State agreed to make a joint sentencing recommendation of two years of probation, sentence withheld, with restitution as a condition of probation in the criminal damage case. The State also agreed that, if

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

Deterick was compliant with the terms of probation and if his probation agent so recommended, he would be eligible to terminate probation after eighteen months.

The circuit court conducted a standard plea colloquy, inquiring into Deterick's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring his understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. *See* WIS. STAT. § 971.08; ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and ***Bangert***, 131 Wis. 2d at 266-72. The court made sure Deterick understood that it would not be bound by any sentencing recommendations. In addition, Deterick provided the court with a signed plea questionnaire. Deterick indicated to the court that he understood the information explained on that form, and is not now claiming otherwise. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987).

Deterick stipulated, through his counsel, that the court could rely on the facts in the complaints as a factual basis for the pleas. Deterick indicated satisfaction with his attorney, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Deterick has not alleged any other facts that would give rise to a manifest injustice. Therefore, his pleas were valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

A challenge to Deterick's sentences would also lack arguable merit. Our review of a sentencing determination begins with a "presumption that the [circuit] court acted reasonably" and it is the defendant's burden to show "some unreasonable or unjustifiable basis in the record" in order to overturn it. ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App.

1984). The record shows that Deterick was afforded an opportunity to address the court, both personally and through counsel. The court followed the joint sentencing recommendation and imposed two years of probation, sentence withheld, with the opportunity to terminate probation after eighteen months upon recommendation of the probation agent if Deterick met all of the conditions of probation. Where a defendant affirmatively joins or approves a sentence recommendation, the defendant cannot attack the sentence on appeal. ***State v. Scherrieks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). In any event, it cannot reasonably be argued that Deterick's sentence is so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

We agree with counsel that there would be no arguable merit to a claim that the circuit court erroneously exercised its discretion in imposing restitution. WISCONSIN 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). Under § 973.20(2)(b), if a crime involves the damage, loss, or destruction of property, the restitution may require that the defendant pay the owner the reasonable repair or replacement cost. Here, the court ordered restitution in the amount of $6,565.06. This amount is supported by testimony from the victim, as well as estimates introduced into evidence, showing that it would cost the victim $4,753.84 to repair the body of his vehicle and $1,811.22 to repair the tires and rims. The court recognized that Deterick had limited ability to pay and ordered Deterick to pay the restitution on a payment schedule of $10 per week. Based on the record before us, we agree with counsel that there would be no arguable merit to challenging the court's restitution order on appeal.

Finally, any argument that the circuit court erroneously exercised its discretion in denying Deterick's postconviction motion would be without merit. In his postconviction motion, Deterick challenged certain surcharges and fees that appear in the judgments of conviction. In the criminal damage to property case, Deterick challenged a $10 "fine" that appears in the judgment of conviction. In its order denying the motion, the circuit court explained that the $10 amount was imposed as a drug offender diversion surcharge required under WIS. STAT. § 973.043. We agree with counsel's analysis in the no-merit report that the surcharge is proper under § 973.043(1). Deterick also challenged certain civil filing fees imposed in the domestic abuse injunction violation case. The court explained that the fees were allowable under WIS. STAT. § 814.61(1)(d), which provides that fees in actions commenced under WIS. STAT. §§ 813.12, 813.122, and 813.123 "shall be collected from the respondent" if he or she is convicted of violating a temporary restraining order or injunction issued under certain enumerated statutory sections. Here, Deterick was convicted of violating a domestic abuse temporary restraining order issued under § 813.12(3), which is one of the statutory sections enumerated in § 814.61(1)(d). Because the imposition of the civil filing fees was required by the court under § 814.61(1)(d), the court properly denied Deterick's postconviction motion to vacate those fees, and any argument to the contrary on appeal is without merit.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgments of conviction and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Colleen Marion is relieved of any further representation of Michael Deterick 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