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DISTRICT IV

January 25, 2018

To:

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

2016AP1833-CRNM State of Wisconsin v. Tony Lee Helmeid (L.C. # 2016CM71)

Before Blanchard, 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 Tristan Breedlove, appointed counsel for Tony Lee Helmeid, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 and ***Anders***

[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.

v. California, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to: (1) Helmeid's waiver of his right to counsel; (2) the validity of his plea; or (3) the sentence imposed by the court. Helmeid was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, I agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, I affirm.

Helmeid was charged with one count of disorderly conduct. Helmeid appeared pro se at his plea and sentencing hearing and indicated that he wished to waive his right to counsel and plead guilty. The court accepted Helmeid's waiver of his right to counsel and guilty plea. The parties jointly recommended that the court withhold sentence and place Helmeid on probation for one year, and the court followed that recommendation. Subsequently, Helmeid, by counsel, moved to vacate probation in favor of an alternate sentence. The parties jointly recommended thirty days of jail. The court vacated the probation and followed the joint recommendation.

First, the no-merit report addresses whether there would be arguable merit to a challenge to the validity of Helmeid's waiver of his right to counsel. A circuit court must conduct a colloquy to ensure that a defendant is knowingly and voluntarily waiving the right to counsel. ***State v. Klessig***, 211 Wis. 2d 194, 206, 564 N.W.2d 716 (1997) ("[W]e mandate the use of a colloquy in every case where a defendant seeks to proceed pro se to prove knowing and voluntary waiver of the right to counsel."). The colloquy must be designed to ensure that the defendant: "(1) made a deliberate choice to proceed without counsel, (2) was aware of the difficulties and disadvantages of self-representation, (3) was aware of the seriousness of the charge or charges against him, and (4) was aware of the general range of penalties that could have been imposed on him." ***Id.*** Additionally, the circuit court must determine that the

defendant is competent to represent himself before accepting the defendant's waiver of the right to counsel. ***Id.*** at 212. I agree with counsel's assessment that the circuit court conducted a colloquy with Helmeid that satisfied the court's mandatory duties to ensure that Helmeid entered a knowing and voluntary waiver of his right to counsel and established that Helmeid was competent to represent himself.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Helmeid's plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that satisfied the court's mandatory duties to personally address Helmeid and determine information such as Helmeid's understanding of the nature of the charge and the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea. *See* ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, I agree with counsel's assessment that a challenge to Helmeid's plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Helmeid's sentence. I agree with counsel that this issue lacks arguable merit. Because Helmeid received the sentence he affirmatively approved, he is barred from challenging the sentence on appeal. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 517-18, 451 N.W.2d 759 (Ct. App. 1989). I discern no other basis to challenge the sentence imposed by the circuit court.

Upon my independent review of the record, I have found no other arguable basis for reversing the judgment of conviction. I conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Tristan Breedlove is relieved of any further representation of Tony Lee Helmeid in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Diane M. Fremgen
Acting Clerk of Court of Appeals