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DISTRICT II

February 14, 2018

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

2017AP1869-CRNM State of Wisconsin v. Nathaniel S. Lasko (L.C. # 2015CF231)

Before Neubauer, C.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).

Nathaniel S. Lasko appeals from a judgment convicting him of possession with intent to deliver narcotics. Lasko'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). Lasko received a copy of the

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

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. WIS. STAT. RULE 809.21.

On March 7, 2015, State Trooper James Reese stopped Lasko's vehicle for traveling eighty-eight miles an hour in a sixty-five mile-per-hour zone. During the stop, Reese detected "an overwhelming odor of fresh, raw marijuana" coming from the vehicle. He asked Lasko, the sole occupant of the vehicle, to step outside. Reese subsequently searched Lasko and the vehicle. He discovered fluoroamphetamine pills on Lasko's person and marijuana in the vehicle along with a list of names/numbers and a substantial amount of cash.

The State charged Lasko with one count of possession with intent to deliver narcotics as a repeater and one count of possession of THC as a second or subsequent offense and as a repeater. Lasko filed a suppression motion challenging the legality of the stop and search. After a hearing on the matter, the circuit court denied the motion. Lasko eventually pled no contest to the first count without the repeater enhancer. The second count was dismissed and read-in. The circuit court sentenced Lasko to four years of initial confinement and three years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether the circuit court properly denied Lasko's suppression motion. The court found "no issue regarding the reason for the initial stop, that being speeding." Likewise, it found no issue regarding the search of Lasko and his vehicle due to the strong odor of marijuana, which provided probable cause to arrest Lasko and search the vehicle without a warrant. *See State v. Secrist*, 224 Wis. 2d 201, 204, 210, 589 N.W.2d 387

(1999). Because the circuit court's determinations are supported by the record and case law, we agree with counsel that a challenge to its decision would lack arguable merit.

The no-merit report also addresses whether Lasko's no contest plea was knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Lasko 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. The court referred to that form when discussing the rights Lasko was giving up by entering his plea. 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 Lasko's no contest plea would lack arguable merit.

Finally, the no-merit report 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, Lasko'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 Lasko's history of similar offenses, 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 Lasko's sentence 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 Susan E. Alesia of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Susan E. Alesia is relieved of further representation of Lasko in this matter.

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

Diane M. Fremgen
Acting Clerk of Court of Appeals