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February 28, 2018

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

2016AP2193-CRNM State of Wisconsin v. Shawn L. Olsen (L.C. #2015CM567)

Before Neubauer, C.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).

Shawn L. Olsen appeals from a judgment of conviction entered upon his no contest plea to one count of fourth-degree sexual assault as a repeater. Olsen's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***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). Olsen was advised of his right to file a response and has elected not to do so. Upon consideration of the no-merit report and our independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Olsen was originally charged with three counts of misdemeanor fourth-degree sexual assault as a habitual offender, contrary to WIS. STAT. § 940.225(3m), and WIS. STAT. § 939.62(1)(a). Pursuant to a plea agreement, he pled no contest to count one and the other two counts were dismissed but read in. The circuit court imposed a seventy-five-day jail sentence to run consecutive to any previously imposed sentence.

The no-merit report addresses the potential issues of whether Olsen's plea was freely, voluntarily, and knowingly entered and whether the sentence was the result of an erroneous exercise of discretion. Our review of the record persuades us that no issue of arguable merit arises from either the plea-taking or the sentencing procedures in this case.

During the plea hearing the circuit court fulfilled each of the duties set forth in ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The record shows that the plea-taking court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1), ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Additionally, the circuit court properly relied upon the defendant's signed plea questionnaire. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). No issue of merit exists from the plea taking.

The no-merit report next addresses the circuit court's exercise of its sentencing discretion. It is a well-settled principle of law that sentencing is committed to the circuit court's discretion and our review is limited to determining whether the court erroneously exercised that discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the sentencing court considered appropriate factors, did not consider improper factors, and reached a reasonable result. *See* ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76; ***State v. Grindemann***, 2002 WI App 106, ¶30, 255 Wis. 2d 632, 648 N.W.2d 507. Further, we cannot conclude that the seventy-five-day jail sentence when measured against the maximum two-year sentence is so excessive or unusual as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There is no arguably meritorious challenge to the sentence imposed in this case.[2]

Our independent review of the record reveals no other potential issues of arguable merit.

Therefore,

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

[2] Additionally, the record along with our file suggests that Olsen has already served the sentence imposed in this case. As such, any challenge to the jail sentence imposed is likely moot. *See* ***State v. Walker***, 2008 WI 34, ¶14, 308 Wis. 2d 666, 747 N.W.2d 673 (a challenge to a reconfinement order was moot because the defendant had completed the reconfinement term and the court's decision would not affect the underlying controversy); ***State ex rel. Jones v. Gerhardstein***, 135 Wis. 2d 161, 169, 400 N.W.2d 1 (Ct. App. 1986) ("An issue is moot when a determination is sought which can have no practical effect on a controversy."). Nonetheless, we have independently reviewed the propriety of the sentencing procedures in this case.

IT IS FURTHER ORDERED that Attorney Daniel R. Goggin II, is relieved from further representing Shawn L. Olsen in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals