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DISTRICT IV

March 16, 2018

To:

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

2017AP1916-CRNM State of Wisconsin v. Charles Solomon McNeal (L.C. # 2016CF56)

Before Lundsten, P.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).

Charles McNeal appeals a judgment convicting him, based upon his entry of an ***Alford*** plea, of resisting an officer. Attorney Vicki Zick has filed a no-merit report seeking to withdraw

[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.

as appellate counsel. *See* WIS. STAT. RULE 809.32; ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit report addresses the sufficiency of the evidence for bindover, McNeal's plea, and the sentence. McNeal was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, I conclude that there are no arguably meritorious appellate issues.

First, I see no arguable basis for plea withdrawal. The circuit court conducted a plea colloquy, inquiring into McNeal's ability to understand the proceedings and the voluntariness of his plea, and further exploring his understanding of the nature of the charge, the penalty range and other direct consequences of the plea, and the constitutional rights being waived. In addition, McNeal provided the court with a signed plea questionnaire, with an attached sheet setting forth the elements of the offense, and McNeal is not now claiming that he misunderstood any of the information provided.

As to the factual basis for the plea, McNeal disputed whether a back injury that one of the sheriff's deputies suffered during the struggle qualified as a "soft tissue injury." However, since the charge was amended as part of the plea agreement to remove the soft-tissue allegation, it was not necessary to provide evidence of the injury to support the plea. The facts set forth in a police report attached to the complaint and adduced at the preliminary hearing—namely, that multiple Green County sheriff's deputies and jail personnel struggled for four to five minutes to get McNeal into a suicide smock as McNeal physically resisted—demonstrated that the State had strong evidence of McNeal's guilt on the reduced charge, as required for an ***Alford*** plea. *See* ***North Carolina v. Alford***, 400 U.S. 25, 26-27 (1970) (authorizing a defendant to enter a guilty plea even while maintaining actual innocence). In conjunction with the plea questionnaire and complaint, the colloquy was sufficient to satisfy the court's obligations under WIS. STAT.

§ 971.08. *See* ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

I further note that there is nothing in the record to suggest that trial counsel's performance was in any way deficient leading up to the plea, and McNeal has not alleged any other facts that would give rise to a manifest injustice. The valid plea waived any objection to bindover and any defenses McNeal might otherwise have raised.

A challenge to McNeal's sentence would also lack arguable merit. The circuit court followed the joint recommendation of the parties, and sentenced McNeal to 120 days, with 90 days of sentence credit, resulting in time served. The sentence imposed did not exceed the maximum available penalty, *see* WIS. STAT. §§ 946.41(1) (classifying resisting an officer as a Class A misdemeanor); 939.51(3)(a) (providing maximum imprisonment of nine months for a Class A misdemeanor), and a defendant cannot otherwise challenge a sentence that he has affirmatively approved, *see* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989).

Upon an 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.

Accordingly,

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

IT IS FURTHER ORDERED that Attorney Vicki Zick is relieved of any further representation of Charles McNeal in this matter pursuant to 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