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DISTRICT IV

March 29, 2018

To:

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Michael T. Rude
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You are hereby notified that the Court has entered the following opinion and order:

2017AP1152-CRNM State of Wisconsin v. Michael T. Rude (L.C. # 2016CM827)

Before Kloppenburg, 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).

Michael Rude appeals a judgment convicting him, based upon a no-contest plea, of disorderly conduct. Assistant State Public Defender Colleen Marion has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; ***Anders v. California***,

[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.

386 U.S. 738, 744 (1967). The no-merit report addresses Rude's plea and sentence, including a restitution award. Rude 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 Rude'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, Rude provided the court with a signed plea questionnaire, with an attached sheet setting forth the elements of the offense. The facts set forth in a police report attached to the complaint and acknowledged by Rude to be true—namely, that Rude had gotten into an altercation with a woman that needed to be broken up by a third party—provided a sufficient factual basis for the plea. In conjunction with the plea questionnaire and complaint, the colloquy was sufficient to satisfy the court's obligations under WIS. STAT. § 971.08(1). *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).

The circuit court afforded Rude an opportunity to withdraw his plea prior to sentencing when it appeared that Rude had not fully understood that the court could consider a read-in crime of battery for restitution purposes, even though Rude had explicitly refused to acknowledge the facts underlying that charge at the plea hearing. Rude did not exercise that option, instead choosing to challenge the amount of restitution at a restitution hearing. Rude has not alleged any other facts that would give rise to a manifest injustice warranting plea withdrawal.

At the restitution hearing, the victim testified that she had gone to the hospital by ambulance following the incident, and had been diagnosed with a concussion. She presented bills totaling $2,119.04. Rude disputed the restitution on the grounds that the victim had not testified about the battery, and that she had not actually paid the bills yet. The circuit court found that the victim's debts were incurred as a result of the incident and awarded the requested amount, but set up a payment plan of $25 per month to take into account Rude's financial circumstances. I see no arguable basis for a challenge to the restitution order.

A challenge to the rest of Rude's sentence would also lack arguable merit. In addition to the restitution order, the circuit court imposed a sentence of one day, as time served, plus court costs. The court explained that it wanted Rude to be able to focus on paying restitution. *See generally* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197 (discussing sentencing factors).

The one-day sentence was far less than the maximum available penalty, and was certainly not unduly harsh. *See* WIS. STAT. §§ 947.01(1) (classifying disorderly conduct as a Class B misdemeanor); 939.51(3)(b) (providing maximum imprisonment of ninety days for a Class B misdemeanor); ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. Furthermore, the sentence was less than Rude's own request that any jail time be on an electronic monitoring bracelet. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (a defendant may not challenge on appeal a sentence that he affirmatively approved).

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 Assistant State Public Defender Colleen Marion is relieved of any further representation of Michael Rude 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