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DISTRICT III

July 24, 2018

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

2017AP947-CRNM State of Wisconsin v. Joseph R. Moldrem (L. C. No. 2016CF41)

Before Hruz, 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).

Counsel for Joseph Moldrem filed a no-merit report concluding no grounds exist to challenge Moldrem's conviction for misdemeanor theft, contrary to WIS. STAT. § 943.20(1)(a).

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.

Moldrem was informed of his right to file a response to the no-merit report and has not responded. Upon an independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), this court concludes there is no arguable merit to any issue that could be raised on appeal. Therefore, the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

The State charged Moldrem with felony bail jumping and misdemeanor theft. The complaint alleged that while out on bond for a felony conviction, Moldrem stole a lunch bag from a grocery store employee's locker. A police officer who was familiar with Moldrem identified him as the individual who could be seen on the store's security video entering the employee locker area and removing the lunch box from a locker. After the officer unsuccessfully attempted contact with Moldrem, he left a message with Moldrem's mother. Moldrem then appeared at the police station with the stolen lunch box, stating he took the lunch box because he was homeless and hungry. Moldrem was then placed under arrest.

In exchange for his no-contest pleas to misdemeanor theft in this case and possession of drug paraphernalia in another case, the State agreed to dismiss and read in the remaining counts from both cases and join in defense counsel's sentence recommendation.² Relevant to this appeal, the parties jointly recommended a withheld sentence with one year of probation. The circuit court imposed a sentence consistent with the joint recommendation.

² Review of Moldrem's conviction in the other matter, Chippewa County Circuit Court case No. 2015CF383, is not before this court.

The no-merit report addresses whether Moldrem's trial counsel was ineffective by failing to pursue a motion to suppress. We agree with appellate counsel's conclusion that nothing in the record would support a nonfrivolous challenge to trial counsel's effectiveness on this or any other ground.

The record discloses no arguable basis for withdrawing Moldrem's no-contest plea. The circuit court's plea colloquy, as supplemented by a plea questionnaire and waiver of rights form with an attached elements worksheet, informed Moldrem of the elements of the offense, the penalties that could be imposed, and the constitutional rights he waived by entering a no-contest plea. Additionally, the court found that a sufficient factual basis existed in the complaint to support the conclusion that Moldrem committed the crime charged. Although the court failed to inform Moldrem that it was not bound by the terms of the plea agreement, as required under *State v. Hampton*, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, Moldrem received the benefit of the plea agreement. Therefore, this defect in the colloquy does not present a manifest injustice warranting plea withdrawal. See *State v. Johnson*, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 441.

The circuit court also failed to advise Moldrem of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). A supplemental response from counsel, however, confirms that Moldrem is a United States citizen not subject to deportation. Any challenge to the plea on this basis would therefore lack arguable merit. The record shows the

plea was knowingly, voluntarily and intelligently made.³ See *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

There is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. Where a defendant affirmatively joins or approves a sentence recommendation, the defendant cannot attack the sentence on appeal. *State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). Here, the court sentenced Moldrem consistent with the joint recommendation. Moreover, it cannot reasonably be argued that Moldrem's sentence is so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Therefore,

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

IT IS FURTHER ORDERED that attorney Melissa Peterson is relieved of her obligation to further represent Moldrem 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

³ The no-merit report notes that although it does not appear a preliminary hearing was held, any challenge to its absence would lack arguable merit. The circuit court's subject matter and personal jurisdictions do not depend on the existence of a preliminary examination. *State v. Moats*, 156 Wis. 2d 74, 89, 457 N.W.2d 299 (1990). Further, any claimed defect with respect to the preliminary hearing is moot in light of the valid no-contest plea. See *State v. Webb*, 160 Wis. 2d 622, 628, 467 N.W.2d 108 (1991).