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DISTRICT IV

August 28, 2018

To:

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

| | |
|-----------------|--|
| 2017AP1644-CRNM | State of Wisconsin v. Steven J. Kolpien, Jr. (L.C. # 2016CF51) |
| 2017AP1645-CRNM | State of Wisconsin v. Steven J. Kolpien, Jr. (L.C. # 2016CF99) |

Before Lundsten, P.J., Kloppenburg and Fitzpatrick, 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).

Attorney Mark A. Schoenfeldt, appointed counsel for Steven J. Kolpien, Jr., has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-

16)¹; *Anders v. California*, 386 U.S. 738 (1967). Kolpien was sent a copy of the no-merit report but has not filed a response. Upon consideration of the report and an independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal.

Kolpien was charged with numerous crimes arising out of two incidents. He pled no contest to one count of possession with intent to deliver methamphetamine in an amount of three grams or less, as a repeater, and one count of felony bail jumping. The remaining charges were dismissed and read in for sentencing. The State agreed to cap its sentencing recommendation at three years of initial confinement plus two years of extended supervision. The circuit court imposed a total sentence of three years of initial confinement plus three years of extended supervision.

The no-merit report first addresses whether there is arguable merit to challenging Kolpien's pleas as not knowing and voluntary and as lacking a factual basis. We agree with counsel that there is no arguable merit to these issues. The plea colloquy the circuit court conducted, including the court's use of the plea questionnaire and waiver of rights form that Kolpien signed, shows that the circuit court satisfied its duties to personally address Kolpien and determine information such as Kolpien's understanding of the nature of the charges, the range of punishments he faced, and the constitutional rights he was waiving by entering his pleas. *See State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The court specifically explained to Kolpien that the court was not bound to follow the State's sentencing recommendation. As to the factual basis requirement, the court summarized the allegations

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

against Kolpien, who acknowledged that he understood those allegations as the basis for his pleas. Additionally, after this summary, Kolpien's counsel indicated that Kolpien stipulated that there was a factual basis for the pleas.

Next, the no-merit report addresses whether there is arguable merit to asserting that the circuit court erroneously exercised its sentencing discretion by imposing an excessive sentence. We agree with counsel's assessment that there is no arguable merit to this issue. The sentence of three years of initial confinement plus three years of extended supervision was far below the maximum range, and the court referenced the required sentencing factors along with other relevant factors when imposing sentence. *See State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. We see no other basis for challenging the sentence.

Finally, the no-merit report addresses whether there is arguable merit to claiming that Kolpien's trial counsel was ineffective. Based on the information before us, we agree with no-merit counsel that there is no arguable merit to such a claim.

Upon our independent review of the record, we see no other potential issues for appeal.

IT IS ORDERED that the judgments of conviction are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Mark A. Schoenfeldt is relieved of any further representation of Steven J. Kolpien, Jr., in these matters. *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