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DISTRICT II

September 12, 2018

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

2017AP2068-CRNM State of Wisconsin v. DeMarco D. Lulloff (L.C. # 2016CM758)

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).

DeMarco D. Lulloff appeals from a judgment convicting him of disorderly conduct with use of a dangerous weapon as a repeater and carrying a concealed weapon as a repeater.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f). All references to the Wisconsin Statutes are to the 2015-16 version.

Lulloff's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Lulloff received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

Lulloff was convicted following no contest pleas to disorderly conduct with use of a dangerous weapon as a repeater and carrying a concealed weapon as a repeater. The charges stemmed from allegations that he ran through a neighborhood late at night while wearing a clown mask and carrying a concealed knife. Lulloff told police that he had previously been attacked by a group of people dressed up as clowns and planned to stab any clowns he saw with his knife. The circuit court imposed an aggregate sentence of two years of initial confinement and two years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether Lulloff's no contest pleas were knowingly, voluntarily, and intelligently entered and had a factual basis. The record shows that the circuit court engaged in a colloquy with Lulloff that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In addition, a signed plea questionnaire and waiver of rights form was entered into the record, along with the relevant jury instructions detailing the elements of the offenses. Furthermore, the court correctly determined that the allegations in the complaint provided a factual basis for the crimes charged. We agree with counsel that a challenge to the entry of Lulloff's no contest pleas would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The records reveal that the court's sentencing decision had a "rational and explainable basis." ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). In making its decision, the court considered the seriousness of the offenses, Lulloff's character, and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Lulloff's prior record, the sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Lulloff's sentence would lack arguable merit.

Finally, the no-merit report addresses whether Lulloff was afforded effective assistance of trial counsel. There is nothing in the record to suggest that Lulloff's trial counsel was ineffective. Indeed, at the plea hearing, Lulloff expressed satisfaction with his trial counsel's representation. Consequently, we are satisfied that the no-merit report properly analyzes this issue as without merit, and we will not discuss it further.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.[2] Because we conclude that there would be no arguable merit to any issue that could

[2] Two mandatory DNA surcharges were assessed on Lulloff's judgment of conviction. Because of the multiple DNA surcharges, we held the case in abeyance pending this court's decision in ***State v. Freiboth***, 2018 WI App 46, ___ Wis. 2d ___, ___ N.W.2d ___ (2015AP2535-CR), which addressed whether a defendant had grounds for plea withdrawal because he was not advised at the time of his pleas that he faced multiple mandatory DNA surcharges. ***Freiboth*** holds that a plea hearing court does not have a duty to inform a defendant about the mandatory DNA surcharge because the surcharge is not punishment and is not a direct consequence of the plea. ***Id.***, ¶12. Consequently, there is no arguable merit to a claim for plea withdrawal based on the assessment of mandatory DNA surcharges.

be raised on appeal, we accept the no-merit report and relieve Attorney Mark A. Schoenfeldt of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Mark A. Schoenfeldt is relieved of further representation of Lulloff in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals