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October 3, 2018

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

2018AP180-CRNM State of Wisconsin v. Syed K. Rizvi (L.C. # 2016CF003587)

Before Kessler, P.J., Brash and Dugan, 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).

Syed K. Rizvi appeals a judgment convicting him of threat to a law enforcement officer. Attorney Jaymes K. Fenton was appointed to represent Rizvi for postconviction and appellate proceedings. He filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),¹ and

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

Anders v. California, 386 U.S. 738 (1967). Rizvi received a copy of the report and he filed a response. After considering the report and the response, and after conducting an independent review of the record, we conclude that there are no issues of arguable merit that could be raised on appeal. *See* WIS. STAT. RULE 809.21. Therefore, we affirm.

The no-merit report first addresses whether there would be arguable merit to a claim that Rizvi did not knowingly, intelligently, and voluntarily enter his guilty plea. Pursuant to a plea agreement, Rizvi pled guilty to one count of threat to a law enforcement officer, and one count of felony bail-jumping was dismissed and read-in. The circuit court conducted a very thorough colloquy with Rizvi that complied with WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). In addition, Rizvi discussed information pertinent to entering a plea in depth with his counsel prior to the plea hearing, reviewed a plea questionnaire and waiver of rights form with his counsel, and signed it. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (the court may rely on a plea questionnaire and waiver of rights form in assessing the defendant's knowledge about the rights he or she is waiving). There would be no arguable merit to an appellate challenge to the plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced Rizvi to thirty months of initial confinement and thirty months of extended supervision, to be served consecutively to any other sentence. The record establishes that the circuit court carefully considered the general objectives of sentencing and applied the sentencing factors in light of the facts of this case and addressed them at length in its sentencing decision, reaching a reasonable result. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (the court must identify the factors it

considered and explain how those factors fit the objectives and influenced its sentencing decision). There would be no arguable merit to a challenge to the sentence.

In his response, Rizvi argues that the victim, N.R., who is a police detective, made racially/ethnically charged comments about him at sentencing and disparaged his religion. Rizvi contends that his appellate counsel should argue on appeal that N.R.'s sentencing comments were inaccurate and based on prejudice. Rizvi also contends that N.R. abused her authority as a police officer.

Rizvi's contentions do not support a claim for appellate relief for two reasons. First, crime victims have the right to make a statement to the court during sentencing. *See* WIS. STAT. § 972.14(3)(a). Where, as here, the police officer is speaking at a sentencing hearing as a victim, the police officer is not acting in his or her capacity as an agent of the State. *See State v. Stewart*, 2013 WI App. 86, ¶15, 349 Wis. 2d 385, 836 N.W.2d 456. Even if Rizvi believes N.R.'s comments unfairly characterized his ethnicity and religion, N.R. made the statements as a crime victim, not as an agent of the State, and thus, did not abuse her authority as a police officer. Second, the circuit court repeatedly stated that while it appreciated N.R.'s sentencing comments because they put into context why she felt threatened by Rizvi's criminal conduct toward her, the court's sentence would not be based on Rizvi's Pakistani background. Therefore, there would be no arguable merit to an appellate challenge to the victim's statements at sentencing.

Our review of the record discloses no other potential issues for appeal. Accordingly, we accept the no-merit report, affirm the conviction, and discharge appellate counsel of the obligation to represent Rizvi further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Jaymes K. Fenton is relieved from further representing Syed K. Rizvi in this appeal. *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