OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III/II

November 7, 2018

To:

Hon. William M. Gabler Sr.
Circuit Court Judge
Eau Claire County Courthouse
721 Oxford Ave.
Eau Claire, WI 54703-5496

Gary King
District Attorney
721 Oxford Ave.
Eau Claire, WI 54703

Susan Schaffer
Clerk of Circuit Court
Eau Claire County Courthouse
721 Oxford Ave., Ste. 2220
Eau Claire, WI 54703-5496

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Chris A. Gramstrup
Gramstrup Law Office
1409 Hammond Ave., Ste. 322
Superior, WI 54880

Hajji Y. McReynolds, #486346
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2016AP2154-CRNM State of Wisconsin v. Hajji Y. McReynolds (L.C. #2015CF281)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

Hajji McReynolds appeals from a judgment convicting him of felony bail jumping contrary to WIS. STAT. § 946.49(1)(b) (2015-16).[1] McReynolds's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967).

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

McReynolds received a copy of the report and filed a response.[2] Upon consideration of the report and an independent review of the record as mandated by ***Anders*** and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether McReynolds's no contest plea was knowingly, voluntarily and intelligently entered; (2) and whether the circuit court misused its sentencing discretion. We agree with appellate counsel that these issues do not have arguable merit for appeal. In his response to counsel's no-merit report, McReynolds argues *inter alia* that his no contest plea was not knowing, intelligent and voluntary.

We observe that at an earlier point in the circuit court proceedings, McReynolds waived his right to counsel in a proper and thorough colloquy with the circuit court. No arguable issue arises from McReynolds's waiver of his right to counsel. Thereafter, McReynolds negotiated his own plea agreement directly with the State.

The record shows that during the plea colloquy, McReynolds answered questions about his no contest plea to felony bail jumping and his understanding of his constitutional rights. The plea colloquy complied with ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794.[3] During the colloquy, the State and McReynolds noted McReynolds's previous decision to

[2] Our August 7, 2018 order stated that we would consider the document received by this court on June 23, 2017, as McReynolds's response to counsel's no-merit report.

[3] During the plea colloquy, the circuit court failed to warn McReynolds that it was not bound by any sentencing recommendation associated with the plea agreement. ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. This error was of no consequence because the State recommended the sentence contemplated by the plea agreement, and the court imposed that sentence. ***State v. Johnson***, 2012 WI App 21, ¶¶12-13, 339 Wis. 2d 421, 811 N.W.2d 441. This issue lacks arguable merit for appeal.

proceed without counsel. The State and McReynolds specifically affirmed that the goal of the plea agreement was to avoid a conviction for the original charge of felony battery because such a conviction would cause McReynolds to lose his eligibility for the Challenge Incarceration Program granted at sentencing in ***State v. McReynolds***, Eau Claire County circuit court case no. 2014CF872 (the Eau Claire case).[4] The circuit court reviewed the elements of the amended charge, felony bail jumping, and found that at the time he allegedly battered a fellow prisoner, McReynolds was subject to a $10,000 cash bond in the Eau Claire case, and he never posted the bond. The State explained that McReynolds's no contest plea assumed that he would stipulate to the factual basis for the amended felony bail jumping charge. McReynolds told the court that he wanted to enter a no contest plea to get the case over with, the plea agreement made sense, he was entering a plea knowingly, voluntarily and intelligently, he understood the elements of felony bail jumping, and he agreed that there was a factual basis for the bail jumping offense in the bond imposed in the Eau Claire case.

In his response to counsel's no-merit report, McReynolds contends that his plea was not knowing, voluntary and intelligent because he did not understand the elements of felony bail jumping and there was no factual basis for his no contest plea. McReynolds further argues that he was not subject to a bond in the Eau Claire case. We conclude that McReynolds's no contest plea was not infirm. The record shows that McReynolds specifically agreed to a factual basis

[4] Had he been convicted of the original charge, battery by a prisoner contrary to WIS. STAT. § 940.20(1), McReynolds would have lost eligibility for the Challenge Incarceration Program. WIS. STAT. § 973.01(3m).

The record in the Eau Claire case is before this court in ***State v. McReynolds***, No. 2016AP2153-CR.

for the amended charge of felony bail jumping. We need not address the circuit court's conclusion that McReynolds was subject to a bond in the Eau Claire case because our conclusion that the no contest plea was not infirm is driven by the rule of ***State v. Harrell***, 182 Wis. 2d 408, 419, 513 N.W.2d 676 (Ct. App. 1994). In ***Harrell***, we held that in a plea bargain context, we will reject a lack of factual basis claim "if ... a factual basis is shown for either the offense to which the plea is offered" or to a "charge reasonably related to the offense to which the plea is offered." ***Id.*** The original felony battery charge was reasonably related to the amended felony bail jumping charge because both charges were based on the allegation that McReynolds battered a prisoner, i.e., he committed a crime while on bond.

We conclude that McReynolds's factual basis and voluntariness challenges to his no contest plea are at odds with the record, with ***Harrell***, and with the positions he took in the circuit court. ***State v. Michels***, 141 Wis. 2d 81, 98, 414 N.W.2d 311 (Ct. App. 1987) (a party cannot take inconsistent positions).

We briefly address McReynolds's other claims: he is actually innocent and the judgment of conviction is void; the circuit court and the assistant district attorney had no authority in the case; and the circuit court coerced him to plead no contest instead of guilty.[5] We conclude that these claims were either waived by McReynolds's no contest plea, ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53, or are inconsistent with the record and the positions McReynolds took in the circuit court, ***Michels***, 141 Wis. 2d at 98.

[5] Pleas of no contest and guilty have the same effect: a criminal conviction.

We conclude that the record confirms that McReynolds's no contest plea was knowingly, voluntarily and intelligently entered, ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and the factual basis requirement was satisfied. In light of the record before this court, McReynolds's response does not present any issue with arguable merit. We conclude that there would be no arguable merit to a challenge to the entry of McReynolds's no contest plea.

With regard to the sentence, the record reveals that the sentencing court's discretionary decision had a "rational and explainable basis." ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. The record supports the circuit court's decision to sentence McReynolds to a five-year term (three years of initial confinement and two years of extended supervision) concurrent to another sentence. The sentence complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentence.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgment of conviction and relieve Attorney Chris Gramstrup of further representation of McReynolds 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 Chris Gramstrup is relieved of further representation of Hajji McReynolds in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals