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DISTRICT II

November 28, 2018

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

2016AP2327-CRNM	State of Wisconsin v. Aziz R. Booker (L.C. #2010CM1707)
2016AP2328-CRNM	State of Wisconsin v. Aziz R. Booker (L.C. #2011CF753)
2016AP2329-CRNM	State of Wisconsin v. Aziz R. Booker (L.C. #2014CF1462)

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).

In these consolidated appeals, Aziz R. Booker appeals judgments of conviction entered upon his guilty or no contest pleas to disorderly conduct, third-degree sexual assault, and delivering cocaine, and an order denying his postconviction motion for plea withdrawal. Booker's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32

(2015-16),¹ and *Anders v. California*, 386 U.S. 738 (1967). Booker received a copy of the report and filed a response. Upon consideration of the no-merit report, the response, and our independent review of the record, we conclude that the judgments and order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal.² See WIS. STAT. RULE 809.21.

Booker was charged with disorderly conduct and misdemeanor bail jumping in connection with circuit court case No. 2010CM1707. He was released on bond. While out on bond in connection with three cases, Booker was arrested and charged in No. 2011CF753 with second-degree sexual assault and three counts of misdemeanor bail jumping. The criminal information added a count of false imprisonment. Booker was released and subsequently arrested in connection with No. 2014CF1462. He was charged with four counts of delivering cocaine,³ four counts of felony bail jumping, and twelve counts of misdemeanor bail jumping. On June 16, 2015, pursuant to a negotiated settlement, Booker entered guilty pleas to disorderly conduct in No. 2010CM1707 and delivery of cocaine in No. 2014CF1462, and pled no contest to an amended charge of third-degree sexual assault in No. 2011CF753. All remaining counts and additional open cases were dismissed, as were the enhancers alleged in connection with the drug offense. The State agreed not to make a specific recommendation and the defense was free to

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

² Though Booker's response is directed at his sexual assault conviction, we discuss all three consolidated matters as part of our independent review.

³ The four counts of delivering cocaine were charged with two sentencing enhancers, the first alleging each offense was a second or subsequent offense, and the second alleging each was committed within 1000 feet of a school.

argue. The circuit court imposed the following: On the cocaine delivery, three years of initial confinement followed by five years of extended supervision; on the sexual assault, four years of initial confinement followed by five years of extended supervision, to run consecutive; on the disorderly conduct, ninety days, to run concurrent. The court ordered Booker to register as a sex offender in connection with the sexual assault conviction.

Postconviction, Booker, by appointed counsel, filed a motion to withdraw his pleas on the ground that trial counsel did not inform him of the collateral consequences of his sexual assault conviction. The circuit court denied the motion. Booker filed no-merit notices of appeal.

Appointed counsel's no-merit report first addresses whether Booker's pleas were knowingly, voluntarily, and intelligently entered. With two exceptions, the plea-taking court fulfilled the duties set forth in *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. *See also* WIS. STAT. § 971.08(1). In addition to the substantive colloquy, the circuit court properly relied on Booker's signed plea questionnaires. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Though the court did not provide the mandatory deportation warnings, this does not give rise to an arguably meritorious issue because there is no suggestion that Booker's pleas are likely to result in deportation. *See* § 971.08(2). The record indicates that Booker was born in Illinois and is a U.S. citizen. Similarly, no potential issue arises from the circuit court's failure to specifically advise Booker that it was not bound by the terms of the parties' plea agreement. *See State v. Hampton*, 2004 WI 107, ¶¶32, 38, 274 Wis. 2d 379, 683 N.W.2d 14 (when the prosecutor agrees to seek charge or sentencing concessions requiring circuit court approval, the court must personally advise the defendant that the prosecutor's recommendations are not binding). Here, the plea agreement did not include

sentencing concessions by the prosecutor and the circuit court accepted the agreement as to the dismissal of charges. See *State v. Johnson*, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 441 (no manifest injustice where the circuit court failed to advise the defendant under *Hampton* but followed the plea agreement as to dismissal of charges).

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals 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). The circuit court’s sentencing remarks show that it considered the seriousness of the offenses, Booker’s character, and the need to protect the public. See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances, it cannot reasonably be argued that Booker’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). We agree with appellate counsel that a challenge to Booker’s sentence would lack arguable merit.

In his response, Booker asserts “that the time has come” for this court to require trial counsel to advise a criminal defendant of the collateral consequences of a sexual assault conviction, specifically, that upon his plea to such an offense, the defendant “is subject to being place[d] on the public sexual registration file ... and that he is also subject to the 980 law.”⁴ As Booker’s response recognizes, trial counsel is not required to inform a criminal defendant of the collateral consequences of his plea and conviction, including the possibility of sex offender

⁴ Booker was sentenced for a violation of WIS. STAT. § 940.225(3). Pursuant to WIS. STAT. § 973.048(2m), he is required to comply with the WIS. STAT. § 301.45 reporting requirements.

registration, *see State v. Bollig*, 2000 WI 6, ¶27, 232 Wis. 2d 561, 605 N.W.2d 199, and of a Chapter 980 civil commitment, *State v. LeMere*, 2016 WI 41, ¶69, 368 Wis. 2d 624, 879 N.W.2d 580. We are bound to follow precedent.

Booker’s response suggests that he was unable to understand the rights he was giving up because of his mental health and intellectual functioning issues. Citing the results of math and reading tests administered by the Department of Corrections, he asks “can a person who has these kinds of scores understand the rights he is giving up by pleading to the charges?” Booker has not set forth an issue of arguable merit. He makes no showing that he did not understand the rights waived by or direct consequences of his pleas. The circuit court was aware that Booker was receiving social security and Booker confirmed that his problems did not “impair [his] reasoning power or [his] judgment,” that his mind was “clear,” and that he understood what was going on and was able to “make [his] own free choice.” Similarly, the record belies Booker’s claim that he was “rushed into this plea.” Though there were last minute adjustments to the plea agreement,⁵ Booker assured the circuit court at the time of his plea and again at sentencing that he was acting of his own free will and wanted to proceed. At the plea hearing, he answered “No” when the circuit court asked if he was “rushed into this at all?” Before accepting Booker’s plea, the circuit court ascertained that he was satisfied with and did not have any questions for trial counsel. At sentencing, Booker was permitted to confer with counsel and personally confirmed that he wanted to proceed.

⁵ At the plea hearing, it was clarified that all sentence enhancers would be dismissed and that Booker would not be pleading to a charge of felony bail jumping in No. 2014CF1462.

Booker's response points to perceived evidentiary weaknesses in the sexual assault case. Booker was well aware of these perceived weaknesses prior to the plea hearing, which is why he pled no contest rather than guilty. His stated concerns were the subject of pretrial motions and were placed on the record at his plea and sentencing hearings. To the extent he complains that appointed counsel has not provided him copies of discovery, WIS. STAT. RULE 809.32 (1)(d) requires counsel to provide copies of "the transcript and circuit court case record" upon request.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to further represent Booker on appeal. Therefore,

IT IS ORDERED that the judgments and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Russell J.A. Jones is relieved from further representing Aziz R. Booker. 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