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DISTRICT IV

January 4, 2019

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

2017AP2492-CRNM State of Wisconsin v. Robert J. Brown (L.C. # 2017CM322)

Before Sherman, 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).

Attorney Michael J. Herbert, appointed counsel for Robert J. Brown, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16)[2] and

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2015-16).

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

Anders v. California, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to Brown's plea or sentencing. Brown was sent a copy of the report, but has not filed a response. After reviewing the no-merit report and the record, I issued an order directing counsel to review whether there would be arguable merit to a claim for plea withdrawal because the elements of disorderly conduct were not enumerated at the plea hearing or on the plea questionnaire. Counsel has filed a supplemental no-merit report concluding that this issue lacks arguable merit. Upon independently reviewing the entire record, as well as the no-merit report and supplemental no-merit report, I agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, I affirm.

Brown was charged with misdemeanor intimidation of a victim and disorderly conduct, both as domestic abuse. Pursuant to a plea agreement, Brown pled guilty to disorderly conduct, and the intimidation of a victim charge was dismissed. The court sentenced Brown to ninety days in jail, but stayed the sentence and placed Brown on probation for one year.

First, the no-merit report addresses whether there would be arguable merit to a challenge to Brown's plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Brown signed, satisfied the court's mandatory duties to personally address Brown and determine information such as Brown's understanding of the range of punishments he faced, the

constitutional rights he waived by entering a plea, and the direct consequences of the plea.[3] *See* ***State v. Hoppe***, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, I agree with counsel's assessment that a challenge to Brown's plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Brown's sentence. I agree with counsel that this issue lacks arguable merit. My review of a sentence determination begins "with the presumption that the [circuit] court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the circuit court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Brown's character and criminal history, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-

[3] Although the circuit court failed to personally advise Brown of the deportation consequences of his plea, contrary to WIS. STAT. § 971.08(1)(c) and (2), no-merit counsel indicates that Brown is a United States citizen. Because Brown is not subject to immigration consequences based on his plea, I determine that this issue lacks arguable merit for appeal. *See* ***State v. Fuerte***, 2017 WI 104, ¶41, 378 Wis. 2d 504, 904 N.W.2d 773.

Additionally, I issued a prior order directing counsel to review whether there would be arguable merit to a claim for plea withdrawal because the elements of disorderly conduct were not enumerated during the plea colloquy or on the plea questionnaire. *See* ***State v. Brandt***, 226 Wis. 2d 610, 619, 594 N.W.2d 759 (providing that among the circuit court's plea colloquy duties is that the court "'determine that the plea is made voluntarily with understanding of the nature of the charge,'" which "'include[s] an awareness of the essential elements of the crime'" (quoted source omitted)). No-merit counsel filed a supplemental no-merit report concluding that this issue lacks arguable merit because, based on counsel's conversations with Brown, counsel has no basis to allege that Brown did not, in fact, understand the elements of disorderly conduct. *See* ***State v. Hampton***, 2004 WI 107, ¶46, 274 Wis. 2d 379, 683 N.W.2d 14 (a defendant may move to withdraw a plea by showing that the plea colloquy was defective and alleging that he or she did not understand the information that should have been provided). I agree with counsel that this issue therefore lacks arguable merit.

46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. I discern no other basis to challenge the sentence imposed by the circuit court.

Upon my independent review of the record, I have found no other arguable basis for reversing the judgment of conviction. I conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Michael J. Herbert is relieved of any further representation of Robert J. Brown in this matter. *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