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DISTRICT IV

January 8, 2019

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

2017AP1876-CRNM State of Wisconsin v. John A. French, Jr.
2017AP1877-CRNM (L.C. ## 16CF1176, 16CM1182, 16CF1193, 16CF1418)
2017AP1878-CRNM
2017AP1879-CRNM

Before Lundsten, P.J., Sherman and Fitzpatrick, 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).

In these consolidated appeals, John A. French, Jr., appeals from four judgments entered upon his guilty pleas to four felonies and five misdemeanors, for a total of nine convictions.¹ French's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),² and *Anders v. California*, 386 U.S. 738 (1967). French received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the no-merit report and our independent review of the record, we conclude that the judgments may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal.

Over a period of several months in 2016, French solicited customers through Craigslist for what he asserted was a home improvement business. French, with the assistance of a female codefendant, would enter into home improvement contracts, accept money up front, and then disappear without performing any work. French was charged with a total of seventeen crimes across the four cases. As part of a negotiated agreement, he pled guilty to: (1) fraudulent writings by forgery, a class H felony; (2) felony theft by contractor, as a party to the crime, a class I felony; (3) uttering a forgery, a class H felony; (4) identity theft, a class H felony; (4) four misdemeanor counts of theft by contractor; and (5) one misdemeanor count of attempted theft by contractor. At the time of sentencing, the parties informed the court they had reached a joint sentencing recommendation. On the three felonies in 2016CF1176, the parties jointly

¹ The appeals are taken from the following four Dane County Circuit Court judgments of conviction: No. 2017AP1876 arises from Dane County 2016CF1176; No. 2017AP1877 arises from Dane County 2016CM1182; No. 2017AP1878 arises from Dane County 2016CF1193; and No. 2017AP1879 arises from Dane County 2016CF1418.

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

recommended three concurrent sentences, each comprising one year of initial confinement followed by two years of extended supervision. On the felony in 2016CF1193, the parties recommended a consecutive sentence comprising one and one-half years of initial confinement followed by two years of extended supervision. On the two misdemeanors in 2016CM1418, the parties recommended two nine-month sentences to run consecutive to each other and to the prison sentence. Finally, in 2016CM1182, the parties recommended three nine-month jail sentences, two to run consecutive to each other and to the previously-imposed sentences, and the third to run concurrent. French appeals.

Appointed counsel's no-merit report addresses whether French's guilty pleas were knowingly, intelligently, and voluntarily entered. With two minor 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 French'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 warning, this does not give rise to an arguably meritorious issue because there is no suggestion in the record that French's pleas are likely to result in deportation, *see* § 971.08(2), and because appellate counsel affirmatively indicates that French cannot make the requisite showing. French has not filed a response disputing appellate counsel's assertion.

The second minor deviation concerns the circuit court's plea-taking colloquy with respect to count two in 2016CF1418. French was charged with attempted theft by contractor, which carries a maximum sentence of four and one-half months. The court mistakenly accepted French's guilty plea to the completed crime and stated the maximum sentence as nine months.

The Department of Corrections brought the error to the circuit court's attention, and the circuit court amended the judgment on count two in 2016CF1418 to reflect the permissible maximum sentence of four months and fifteen days. We agree with appointed counsel that a challenge to the entry of French's guilty pleas would lack arguable merit.

Appointed counsel's no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. We agree with appellate counsel that a challenge to French's sentence would lack arguable merit. The court imposed a sentence in accordance with French's own recommendation. See *State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (a defendant may not challenge on appeal a sentence that he affirmatively approved). Further, 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). Additionally, French's sentence is not reasonably characterized as so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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 French on appeal. Therefore,

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

IT IS FURTHER ORDERED that Attorney Vicki Zick is relieved from further representing John A. French, Jr., in these consolidated appeals. WIS. STAT. RULE 809.32(3).

Nos. 2017AP1876-CRNM
2017AP1877-CRNM
2017AP1878-CRNM
2017AP1879-CRNM

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

Sheila T. Reiff
Clerk of Court of Appeals