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DISTRICT I

March 14, 2019

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

2018AP1043-CRNM State of Wisconsin v. Gregory D. Bryant (L.C. # 2017CF342)

Before Brennan, Kloppenburg and Brash, 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).

Gregory D. Bryant appeals a judgment convicting him of one count of possession of narcotics, a felony, and one count of possession of cocaine, a misdemeanor. Attorney Vicki Zick was appointed to represent Bryant for postconviction and appellate proceedings. She filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18),¹ and *Anders v. California*, 386 U.S.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

738 (1967). Bryant received a copy of the report and was advised of his right to file a response, but he has not responded. After considering the report and 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 Bryant's plea was not knowingly, intelligently, and voluntarily entered. The circuit court conducted a very thorough colloquy with Bryant in accord with *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). In addition, Bryant 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). The plea colloquy and supporting written documentation amply complied with WIS. STAT. § 971.08 and *Bangert*, 131 Wis. 2d at 266-72. Therefore, we conclude that there would be no arguable merit to an appellate challenge to his plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the prosecutor implicitly breached the plea agreement by arguing for a harsher sentence. Pursuant to the plea agreement, the prosecutor agreed to argue that Bryant should receive a total of one year of initial confinement for his convictions. During his sentencing remarks, the prosecutor made the agreed recommendation. However, when referring to Bryant's character, the prosecutor began to discuss Bryant's 1999 conviction of first-degree reckless homicide. After Bryant's attorney objected on the grounds that the conviction was remote in time and not drug related, the circuit court directed the prosecutor not to address the prior conviction further.

A prosecutor may discuss negative information about a defendant at sentencing as long as the prosecutor does not suggest to the court that he or she believes that the disposition being recommended pursuant to the plea agreement is insufficient. *State v. Liukonen*, 2004 WI App 157, ¶¶10-11, 276 Wis. 2d 64, 686 N.W.2d 689. Here, the prosecutor’s comments, when read in their entirety, do not indicate that he was arguing for a longer sentence than he agreed to recommend. Therefore, there would be no arguable merit to a claim that the prosecutor breached the plea agreement during 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 Bryant 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 Vicki Zick is relieved from further representing Gregory D. Bryant 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