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April 16, 2019

To:

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

2018AP961-CRNM State of Wisconsin v. Jerome T. Walker (L.C. # 2016CF400)

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

Jerome Walker appeals a judgment convicting him, based upon a no-contest plea, of battery by a prisoner. Attorney Patricia Sommer has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18)¹; *Anders v. California*, 386 U.S.

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

738, 744 (1967). The no-merit report addresses Walker’s plea and sentence. Walker was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. The circuit court conducted a plea colloquy, inquiring into Walker’s ability to understand the proceedings and the voluntariness of his plea, and further exploring his understanding of the nature of the charge, the penalty range and other direct consequences of the plea, and the constitutional rights being waived. In addition, Walker provided the court with a signed plea questionnaire, with an attached jury instruction setting forth the elements of the offense. The facts set forth in the complaint—namely, that Walker charged at a correctional officer after failing to comply with a directive to leave an area, and struck the officer multiple times with his fists—provided a sufficient factual basis for the plea. In conjunction with the plea questionnaire and complaint, the colloquy was sufficient to satisfy the court’s obligations under WIS. STAT. § 971.08. See *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). We further note that there is nothing in the record to suggest that trial counsel’s performance was in any way deficient leading up to the plea, and Walker has not alleged any other facts that would give rise to a manifest injustice.

A challenge to Walker’s sentence would also lack arguable merit. The record shows that the circuit court considered relevant sentencing factors and rationally explained their application to this case, emphasizing that the battery was particularly serious because it was prolonged, and that Walker’s criminal history demonstrated that he was violent, lacked control over his actions, and presented a “high threat to society.” See generally *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court then sentenced Walker to two years of initial

confinement and two years of extended supervision, to be served consecutive to the sentence Walker was already serving. The court also imposed standard costs and determined that Walker was not eligible for the challenge incarceration program or the substance abuse program.

The sentence imposed did not exceed the maximum available penalty. *See* WIS. STAT. §§ 940.20(1) (classifying battery by a prisoner as a Class H felony); and 973.01(2)(b)8. and (d)5. (providing maximum terms of three years of initial confinement and three years of extended supervision for a Class H felony). Nor was the sentence unduly harsh, taking into account that it was well below the maximum and the State also dropped a repeater allegation as part of the plea agreement. *See generally State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

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

Accordingly,

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

IT IS FURTHER ORDERED that Patricia Sommer is relieved of any further representation of Jerome Walker in this matter pursuant to 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

