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May 8, 2019

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Jason W. Kasten
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You are hereby notified that the Court has entered the following opinion and order:

2017AP1292-CRNM State of Wisconsin v. Jason W. Kasten (L.C. # 2015CF356)

Before Neubauer, C.J., Gundrum and Hagedorn, 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).

Jason W. Kasten appeals from a judgment of conviction entered upon his guilty plea to one count of unauthorized use of an entity's identifying information or documents as a party to the crime. Kasten's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE

809.32 (2017-18),¹ and *Anders v. California*, 386 U.S. 738 (1967). Kasten 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 judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Kasten was charged with one count each of unauthorized use of an entity's identifying information or documents (referred to on the judgment as "identity theft"), and felony theft by false representation, both as a party to the crime. The charges stemmed from the presentation for payment of two fraudulent checks to a local merchant. As part of a negotiated settlement, Kasten pled guilty to count one, use of an entity's identifying information or documents, and the other count was dismissed and read in. The parties agreed to jointly recommend a withheld sentence in favor of one year of probation with conditions to include ten days of jail time and payment of restitution in the amount of \$5000, joint and several with codefendant Lisa Kasten. The circuit court ordered the jointly recommended disposition.

Appellate counsel's no-merit report addresses whether Kasten's guilty plea was knowingly, intelligently, and voluntarily entered. The record shows that the circuit court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1), *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Additionally, the circuit court properly relied upon Kasten's signed plea questionnaire. *See State v.*

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

Moederndorfer, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). We agree with appointed counsel that a challenge to the entry of Kasten's guilty plea 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 Kasten's sentence would lack arguable merit. The court imposed a sentence in accordance with Kasten'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).

Appointed counsel's no-merit also addresses the potential issue of whether Kasten received the ineffective assistance of trial counsel. This court is satisfied that the no-merit report properly analyzes this issue as without merit and will not discuss it further.

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

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

IT IS FURTHER ORDERED that Attorney Urszula Tempska is relieved from further representing Jason W. Kasten in this appeal. 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