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DISTRICT IV

May 24, 2019

To:

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

2018AP738-CRNM State of Wisconsin v. Zachary Tyler Jach (L.C. # 2017CF228)

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).

Attorney Michael J. Herbert, appointed counsel for Zachary T. Jach, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there

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

would be arguable merit to a challenge to Jach's plea or sentencing. Jach was sent a copy of the report, but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel that there are no issues of arguable merit. We affirm.

In June 2017, Jach was charged with resisting an officer, causing soft tissue injury; attempting to flee; felony criminal damage to property by use of a dangerous weapon; and misdemeanor criminal damage to property. Jach entered pleas of not guilty and not guilty by reason of mental disease or defect. The circuit court ordered a psychological evaluation. The evaluating psychiatrist submitted a report concluding that he was unable to support the special plea. Jach then reached a plea agreement with the State under which Jach pled no-contest to resisting an officer and causing soft tissue injury, and the parties jointly recommended a sentence of twenty months of initial confinement and thirty-six months of extended supervision and that the court impose restitution. The court followed the joint sentencing recommendation.

The no-merit report addresses whether there would be arguable merit to a challenge to Jach's plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as ineffective assistance of counsel, a plea that was not knowing, intelligent, and voluntary, or lack of a factual basis to support the plea. *State v. Krieger*, 163 Wis. 2d 241, 250–51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Jach signed, satisfied the court's mandatory duties to personally address Jach and determine information such as Jach's understanding of the nature of the charge and the range of punishments he faced, the

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

The no-merit report also addresses whether there would be arguable merit to a claim that the circuit court erred by failing to engage Jach in a colloquy regarding withdrawal of his not guilty by reason of mental disease or defect plea. We agree with counsel's assessment that this issue lacks arguable merit. See *State v. Francis*, 2005 WI App 161, ¶¶22-27, 285 Wis. 2d 451, 701 N.W.2d 632 (circuit court not required to conduct a colloquy as to withdrawal of previously entered not guilty by reason of mental disease or defect plea before accepting a subsequent inconsistent plea).

Finally, the no-merit report addresses whether there would be arguable merit to a challenge to Jach's sentence. We agree with counsel that this issue lacks arguable merit. Because Jach affirmatively approved the sentence he received, Jach may not challenge that sentence on appeal. See *State v. Scherreiks*, 153 Wis. 2d 510, 517, 451 N.W.2d 759 (Ct. App. 1989). We discern no basis to challenge the sentence imposed by the circuit court.

² The no-merit report notes that the circuit court did not inform Jach during the plea colloquy that, as a consequence of the plea, Jach would be prohibited from voting until his civil rights were restored. The no-merit report also notes, however, that the loss of voting privileges was stated on the plea questionnaire that Jach signed and that the court confirmed during the colloquy that Jach had read and understood the contents of the form. We agree with counsel that further proceedings on this basis would lack arguable merit.

Upon our 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.

IT IS ORDERED that the judgment 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 Zachary T. Jach 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