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DISTRICT II

July 24, 2019

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

2018AP992-CRNM State of Wisconsin v. Jason A. Makar (L.C. #2016CF227)

Before Reilly, P.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 A. Makar appeals from a judgment of conviction entered upon his no contest plea to first-degree reckless homicide by the delivery of heroin. Makar's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18),¹ and *Anders v. California*, 386

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

U.S. 738 (1967). Makar 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.

Following the drug-related death of a young woman, Makar was charged with first-degree reckless homicide by the delivery of heroin, a Class C felony. Makar and a codefendant purchased the heroin that caused the victim's death. As part of an agreement with the State, Makar cooperated in the prosecution of his codefendant, pled no contest to the charge, and the State agreed to recommend a ten-year sentence, with five years of initial confinement followed by five years of extended supervision, to run concurrent with a revocation sentence Makar was serving. In addition, Makar agreed to pay restitution to the victim's family for funeral expenses along with a ten percent surcharge. Liability for restitution would be joint and several with his codefendant. The circuit court imposed a twelve-year sentence, with six years of initial confinement followed by six years of extended supervision, and ordered that it run consecutive to Makar's prior sentence. Makar was ordered to pay \$11,640.98 in restitution, joint and several with his codefendant. Makar appeals.

Appellate counsel's no-merit report addresses whether Makar's no contest 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. *See also State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Additionally, the circuit court properly relied on Makar's signed plea questionnaire and its multiple attachments. *See State v.*

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 Makar’s no contest plea would lack arguable merit.²

Appellate counsel’s no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. 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). The circuit court determined the crime to be “very serious.” Not only did a young woman lose her life, her “[c]hildren lost their mother,” and her parents “lost a child.” In looking at Makar’s character, the circuit court acknowledged his remorse and extensive cooperation with law enforcement, but also considered his “extremely long criminal history,” his repeated periods of incarceration and supervision, and that multiple attempts at treatment were unsuccessful: “Being on supervision even recently serving a sanction in jail didn’t stop the defendant from providing heroin to [the victim].” The circuit court also emphasized the need to protect the community. In addition to Makar’s many unsuccessful interventions, the court characterized him as “part of the drug problem in Sheboygan, ruining lives and causing people to steal and commit crimes, neglecting their families, losing their jobs and with [the victim,] losing her life.” Under the circumstances, it cannot reasonably be argued that Makar’s twelve-year bifurcated sentence, which is well below the maximum of forty years,

² As reflected on the charging documents, judgment, and in the plea hearing transcript, Makar pled to the crime with the WIS. STAT. § 939.05, party to a crime (PTAC) modifier. The plea-taking court did not ascertain Makar’s understanding of the PTAC modifier and the plea questionnaire neither mentions PTAC liability nor attaches its elements. These facts do not give rise to a meritorious issue because Makar directly committed the crime of conviction. See *State v. Brown*, 2012 WI App 139, ¶¶13-15, 345 Wis. 2d 333, 835 N.W.2d 918 (plea-taking court was not required to explain PTAC liability where the actor directly committed the crime, rendering such explanation superfluous). See also WIS JI—CRIMINAL 1021 (to be guilty of reckless homicide, it is not necessary that the defendant delivered the substance directly to the victim).

is so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with appellate counsel that a challenge to Makar's sentence would lack arguable merit.

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 Makar 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 Angela D. Wenzel is relieved from further representing Jason A. Makar 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