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**DISTRICT IV**

July 23, 2019

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

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2018AP1487-CRNM      State of Wisconsin v. Chad L. Hummell (L.C. # 2016CF195)

Before Lundsten, P.J., Blanchard and Fitzpatrick, 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 Rosenberg, appointed counsel for Chad Hummell, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32<sup>1</sup> and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be

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

arguable merit to a challenge to Hummell's plea or to the sentence imposed by the circuit court or its order denying Hummell's postconviction motion for sentence modification. Hummell 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's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Hummell was charged with homicide by intoxicated use of a vehicle, homicide by use of a vehicle with a prohibited alcohol concentration (PAC), two counts of injury by intoxicated use of a vehicle, two counts of injury by use of a vehicle with a PAC, two counts of operating while intoxicated causing injury, and two counts of operating with a PAC causing injury. Pursuant to a plea agreement, Hummell pled guilty to homicide by intoxicated use of a vehicle and two counts of injury by intoxicated use of a vehicle, and the remaining counts were dismissed and read in for sentencing purposes. The court sentenced Hummell to the maximum possible sentence; that is, a total of thirty years of initial confinement and twenty years of extended supervision.

Hummell filed a postconviction motion for sentence modification, arguing that the maximum sentence imposed by the circuit court was unduly harsh. The circuit court denied the motion.

First, the no-merit report addresses whether there would be arguable merit to a challenge to Hummell's plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that satisfied the court's mandatory duties to personally address Hummell and determine information such as Hummell's understanding of

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

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Hummell's sentence or to the circuit court order denying Hummell's motion for sentence modification. We agree with counsel that any challenge to the circuit court's sentence or its order denying sentence modification would lack arguable merit. A challenge to a circuit court's exercise of its sentencing discretion must overcome our presumption that the sentence was reasonable. *State v. Ramuta*, 2003 WI App 80, ¶23, 261 Wis. 2d 784, 661 N.W.2d 483. Here, the court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the gravity of the offenses, Hummell's character, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. The court explained that it denied Hummell's motion for sentence modification because it rejected Hummell's argument that the maximum sentence was unduly harsh, reiterating the reasons that it believed the maximum sentence was warranted on the facts of this case. We conclude that, given the facts before it, the circuit court did not erroneously exercise its discretion by denying the motion for sentence modification. *See State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances" (quoted source omitted)); *State v. Grindemann*, 2002 WI App 106, ¶30, 255

Wis. 2d 632, 648 N.W.2d 507 (“We review a trial court’s conclusion that a sentence it imposed was *not* unduly harsh and unconscionable for an erroneous exercise of discretion.” (quoted source omitted)). We discern no basis to challenge the sentence imposed by the circuit court or the circuit court’s order denying sentence modification.

Finally, the no-merit report addresses whether there would be arguable merit to a challenge to the order denying the postconviction motion on grounds that Hummell did not personally appear at the motion hearing. We agree with counsel that Hummell’s personal appearance was not required because no issues of fact were determined at the non-evidentiary hearing, and that this issue therefore lacks arguable merit. *See State v. Brockett*, 2002 WI App 115, ¶19, 254 Wis. 2d 817, 647 N.W.2d 357 (defendant’s right to be present at postconviction hearing limited to “those postconviction evidentiary hearings that raise substantial issues of fact as to events in which the defendant participated”).

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 of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Michael Rosenberg is relieved of any further representation of Chad Hummell in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*