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DISTRICT II

August 21, 2019

To:

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

2018AP2037-CRNM State of Wisconsin v. Thomas R. McAuliffe (L.C. #2013CF1368)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

Thomas R. McAuliffe appeals from a judgment convicting him of first-degree sexual assault of a child. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Neither McAuliffe nor his guardian ad litem (GAL) has filed a response.² Upon consideration of the report and an independent review of the record, we conclude that the judgment may be summarily affirmed. *See* WIS. STAT. RULE 809.21.

McAuliffe was convicted following a guilty plea to first-degree sexual assault of a child. The charge stemmed from his sexual contact with a nine-year-old girl, which he admitted to police. Several additional charges were dismissed pursuant to a plea agreement.³ The circuit court sentenced McAuliffe to five years of initial confinement and fifteen years of extended supervision.

The no-merit report addresses potential issues of whether McAuliffe's plea was validly entered, whether the circuit court properly imposed its sentence, and whether trial counsel was ineffective for failing to raise the issue of McAuliffe's competency prior to the plea or sentencing. This court is satisfied that the no-merit report correctly analyzes the issues it raises as without merit, and we will not discuss them further.

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

² During postconviction proceedings, the circuit court found that McAuliffe was not competent to proceed. Accordingly, it appointed him a GAL.

³ Two charges (first-degree sexual assault of a child and exposing genitals to a child) were dismissed and read in. One charge (first-degree sexual assault of a child) was dismissed outright.

As noted in the no-merit report, McAuliffe could argue, based upon the postconviction competency reports, that he was not competent to enter his plea. However, plea withdrawal now runs the risk of exposing McAuliffe to a longer period of custody than he currently faces (i.e., a possible civil commitment if he is not competent to proceed or a possible longer criminal sentence if his competency is restored and he is convicted of the dismissed charges). Given the fact that McAuliffe's term of initial confinement is nearly over, counsel recognizes a strategic reason for not pursuing the issue. His decision not to do so comes after consulting with McAuliffe's GAL, who agrees that counsel's action is appropriate.

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

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Matt Last is relieved of further representation of Thomas R. McAuliffe in this appeal. *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