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DISTRICT IV

September 16, 2019

To:

Hon. Ellen K. Berz
Circuit Court Judge
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Jeremy E. Waugh
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You are hereby notified that the Court has entered the following opinion and order:

2018AP455-CRNM	State of Wisconsin v. Jeremy E. Waugh (L.C. # 2016CF2066)
2018AP456-CRNM	State of Wisconsin v. Jeremy E. Waugh (L.C. # 2016CF2072)
2018AP457-CRNM	State of Wisconsin v. Jeremy E. Waugh (L.C. # 2016CM1904)

Before Blanchard, Kloppenburg, and Graham, 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 Thomas Aquino, appointed counsel for Jeremy Waugh, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2017-18)¹

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

and *Anders v. California*, 386 U.S. 738 (1967). Waugh was sent a copy of the report and has filed a response. Counsel filed a supplemental no-merit report in response to this court's order. Counsel also filed a letter stating that Waugh no longer wishes to pursue plea withdrawal and instead seeks only a new sentencing hearing.² Accordingly, our analysis is limited to whether there is any arguable basis for Waugh to seek resentencing. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. Based upon the no-merit report, the response, the supplemental report, and counsel's letter, and an independent review of the record, we conclude that further proceedings would be wholly frivolous.

Waugh was convicted of one count of cocaine possession, one count of contacting the alleged victim after a domestic abuse arrest, and two counts of fourth-degree sexual assault as an act of domestic abuse. The circuit court imposed concurrent probation terms of three years and two years on the cocaine possession count and the contacting-the-alleged-victim count. The court imposed consecutive jail terms of six months, deemed served, on the sexual assault counts.

In sentencing Waugh, the circuit court discussed the required sentencing factors along with other relevant factors. *See State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum allowed. We see no arguable basis to challenge the circuit court's exercise of sentencing discretion.

² In an order dated June 24, 2019, we provided Waugh with fourteen days to inform us if he disagreed with counsel's representation that he no longer wishes to pursue plea withdrawal and instead seeks only a new sentencing hearing. Waugh has not responded to our order. Therefore, as we indicated in that order, we will proceed based on counsel's representation.

In his response to the no-merit report, Waugh argues that the two-year probation term he received for the contacting-the-alleged-victim count went beyond the maximum. There is no arguable merit to this issue. As counsel explains, the maximum probation term for this offense is normally one year; however, the maximum here was two years because Waugh was convicted of three misdemeanors at the same time. *See* WIS. STAT. § 973.09(2)(a)1r. and 2. (2013-14).

Waugh next argues that he is entitled to resentencing because the circuit court sentenced him based on inaccurate information. There is no arguable merit to this issue. Waugh contends that the court relied on inaccurate information when it stated that he engaged in repeated violations of a court order prohibiting contact with the victim. Waugh asserts that he did not violate any court orders. However, the record supports the court's statement. On October 10, 2016, as a condition of bail, Waugh was ordered not to have any direct or indirect contact with the victim. At a hearing on November 22, 2016, the prosecutor informed the court that Waugh repeatedly violated this order by calling the victim and enlisting a third party to call the victim. The prosecutor noted there was a police report documenting the violations. Further, no-merit counsel has submitted an affidavit containing what appears to be a copy of that report. Waugh has not submitted any information that calls the report into question.

Our review of the record discloses no other potential basis for Waugh to challenge his sentence.

Therefore,

IT IS ORDERED that the judgments of conviction are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Thomas Aquino is relieved of any further representation of Waugh 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