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DISTRICT IV

December 20, 2019

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John R. Schlegel
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You are hereby notified that the Court has entered the following opinion and order:

2018AP1622-CRNM State or Wisconsin v. John R. Schlegel (L.C. # 2017CM650)

Before Blanchard, J.[1]

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).

John Schlegel appeals a judgment convicting him of one count of disorderly conduct, after he entered a guilty plea. Attorney Vicki Zick has filed a no-merit report seeking to

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2017-18). All further references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32; ***Anders v. California***, 386 U.S. 738, 744 (1967); and ***State ex rel. McCoy v. Wisconsin Court of Appeals***, 137 Wis. 2d 90, 403 N.W.2d 449 (1987), *aff'd*, 486 U.S. 429 (1988). The no-merit report addresses the validity of the plea and sentence. Schlegel was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, I conclude that there are no arguably meritorious appellate issues.

First, there is no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. ***State v. Bangert***, 131 Wis. 2d 246, 274-75, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Schlegel entered a plea of no contest pursuant to a negotiated plea agreement that was presented in open court. In exchange for Schlegel's plea, the State agreed to recommend that Schlegel pay a fine and submit a DNA sample but serve no jail time. The circuit court conducted a standard plea colloquy, inquiring into Schlegel's ability to understand the proceedings and the voluntariness of his plea decisions, and further exploring his understanding of the nature of the charges, the penalty ranges and other direct consequences of the pleas, and the constitutional rights being waived. *See* WIS. STAT. § 971.08; ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and ***Bangert***, 131 Wis. 2d at 266-72. In addition, Schlegel provided the court with a signed plea questionnaire. Schlegel indicated to the court that he understood the information explained on that form, and he is not now claiming otherwise. *See* ***State v.***

Moederndorfer, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Schlegel, through his counsel, stipulated that the criminal complaint set forth a factual basis for the plea. Schlegel indicated that he had sufficient time to consult with his attorney, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Schlegel has not alleged any other facts that would give rise to a manifest injustice. Therefore, his plea was valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886; WIS. STAT. § 971.31(10).

A challenge to Schlegel's sentence also would lack arguable merit. Schlegel faced up to ninety days of imprisonment and a fine not to exceed $1,000. *See* WIS. STAT. §§ 947.01(1) (classifying disorderly conduct as a Class B misdemeanor), 939.51(3)(b) (stating maximum penalties for a Class B misdemeanor). The record reflects that the court followed the joint sentencing recommendation and imposed fines and costs in the amount of $579.00 and ordered that Schlegel provide a DNA sample. Under the circumstances, it cannot reasonably be argued that the sentence is so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Upon our independent review of the record, this court has found no other arguable basis for reversing the judgment of conviction. *See* ***State v. Allen***, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. I conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Vicki Zick is relieved of any further representation of John Schlegel in this matter pursuant to 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