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December 26, 2019

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

2019AP3-CRNM State of Wisconsin v. London D. Neal (L.C. #2015CF369)
2019AP75-CRNM State of Wisconsin v. London D. Neal (L.C. #2016CF166)

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).

London Neal appeals judgments convicting him of one count of second-degree sexual assault of a child and one count of witness intimidation with threat of force. Attorney Hans P. Koesser was appointed to represent Neal on appeal. Attorney Koesser filed a

no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18),[1] and ***Anders v. California***, 386 U.S. 738 (1967). Neal received a copy of the report and responded to it. After considering the report and the response, and after conducting an independent review of the records, we conclude that there are no issues of arguable merit that could be raised on appeal. *See* WIS. STAT. RULE 809.21. Therefore, we affirm.

The no-merit report first addresses whether there would be arguable merit to a claim that Neal did not knowingly, intelligently, and voluntarily enter his no-contest pleas. The circuit court conducted a very thorough colloquy with Neal that complied with WIS. STAT. § 971.08 and ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). In addition, Neal discussed information pertinent to entering his pleas with his counsel prior to the plea hearing, reviewed a plea questionnaire and waiver of rights form with his counsel, and informed the circuit court that he understood the information on the form. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (the court may rely on a plea questionnaire and waiver of rights form in assessing the defendant's knowledge about the rights he or she is waiving). The circuit court explained to Neal the effect of having two of the charges dismissed and read in for purposes of sentencing. Neal agreed that the State had sufficient evidence to convict him based on the criminal complaints. Therefore, there would be no arguable merit to an appellate challenge to the pleas.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion when it sentenced Neal to twelve years of

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

initial confinement and eight years of extended supervision for second-degree sexual assault and five years of initial confinement and five years of extended supervision for witness intimidation. The record establishes that the circuit court carefully considered the general objectives of sentencing and applied the sentencing factors to the facts of this case in framing its sentence. *See* ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (the court must identify the factors it considered and explain how those factors fit the objectives and influenced its sentencing decision). The circuit court's decision was well explained and reasonable. Therefore, there would be no arguable merit to a challenge to the sentence.

In his response, Neal argues that his pleas were not knowingly, voluntarily and intelligently entered because he was not being given his psychiatric medicine by the jail when these criminal proceedings were pending. The fact that Neal was not given psychiatric medicine is not legal grounds for Neal to withdraw his pleas. During the plea colloquy, Neal informed the court that he was not being given his medicine. The circuit court then carefully questioned Neal about how this affected him, asking him whether he was thinking clearly and whether he felt stable and even keeled. Neal responded affirmatively, acknowledging that his ability to think and understand was not adversely affected by the lack of medicine. Therefore, there would be no arguable merit to a claim that Neal should be allowed to withdraw his pleas because he was not being given medication.

Neal also argues in his response that he should be allowed to withdraw his plea to second-degree sexual assault because he did not have the intent to be sexually aroused when he hit the victim and threw her to the ground. He contends that he committed battery, not sexual assault. This argument would have no arguable merit on appeal because Neal admitted that the State could use the complaint as a factual basis for the plea and agreed that the State had

sufficient evidence to convict him of second-degree sexual assault. The complaint states that the victim informed the police that Neal attacked her, hit her and threw her to the ground. He then grabbed and groped her breasts and attempted to get inside her pants. The complaint also states that a citizen witness saw Neal on top of the struggling victim and saw Neal grabbing her vaginal area through her clothing. The facts alleged in the complaint support the second-degree sexual assault conviction. Therefore, there would be no arguable merit to a claim that Neal should be allowed to withdraw his plea because he did not intend to seek sexual gratification when he attacked the victim.

Neal next argues in his response that he was confused when he entered his pleas and was only doing what his lawyer told him to do. He asks this court to independently review the record to determine whether his responses during the plea colloquy are sufficient for him to bring a postconviction motion challenging the pleas. As we explained above, we have carefully reviewed the plea colloquy and conclude that there are no grounds to withdraw the pleas. Although Neal contends that he was confused, he never indicated that he was confused during the colloquy. There would be no arguable merit to this claim.

Our review of the record discloses no other potential issues for appeal. Accordingly, we affirm the convictions and discharge appellate counsel of the obligation of further representing Neal in these appeals.

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

IT IS FURTHER ORDERED that Attorney Hans P. Koesser is relieved from further representing London Neal in these appeals. *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