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January 10, 2020

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

2019AP25-CRNM State of Wisconsin v. Terrel D. Brooks (L.C. # 2016CF1527)

Before Brash, P.J., Kessler and Dugan, 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).

Terrel D. Brooks appeals a judgment convicting him of felony murder as a party to a crime, with armed robbery as the predicate offense. He also appeals an order denying his postconviction motion. Attorney Sara Heinemann Roemaat was appointed to represent Brooks for postconviction and appellate proceedings. She filed a no-merit report pursuant to WIS. STAT.

RULE 809.32 (2017-18),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Brooks was notified that a no-merit report was filed and was advised of his right to file a response, but he has not responded. After considering the report and conducting an independent review of the record, 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 Brooks should be allowed to withdraw his guilty plea because he did not knowingly, intelligently, and voluntarily enter the same. The circuit court conducted a colloquy with Brooks that complied with WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). Brooks discussed information pertinent to entering his plea with his counsel prior to the plea hearing, reviewed a plea questionnaire and waiver of rights form with his counsel, and signed it. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (stating that the circuit 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). There would be no arguable merit to an appellate challenge to the plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court erroneously exercised its sentencing discretion when it sentenced Brooks to fifteen years of initial confinement and twelve years of extended supervision. The record establishes that the circuit court considered the general objectives of sentencing and applied the sentencing factors in light of the facts of this case and addressed them in its sentencing decision,

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

reaching a reasonable result. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (stating that the circuit court must identify the factors it considered and explain how those factors fit the objectives and influenced its sentencing decision). There would be no arguable merit to a challenge to the sentence.

Although counsel did not address the fact that Brooks was charged as a party to a crime in the no-merit report, we briefly discuss the issue here. The Wisconsin Supreme Court and this court have previously explained that it is redundant and unnecessary to charge a defendant with felony murder, as a party to a crime, because a “person convicted of a felony as a party to the crime becomes a principal to a murder occurring as a result of that felony.” *See State v. Krawczyk*, 2003 WI App 6, ¶25, 259 Wis. 2d 843, 657 N.W.2d 77 (citation omitted). However, case law also teaches that no prejudice results from inclusion of a party-to-a-crime allegation in a felony murder charge and, therefore, inclusion of a party-to-a-crime allegation does not justify plea withdrawal. *See id.* There would be no arguable merit to a challenge to the fact that Brooks was convicted as a party-to-a-crime.

Our review of the record discloses no other potential issues for appeal. Accordingly, we accept the no-merit report, affirm the conviction and discharge appellate counsel of the obligation to further represent Brooks.

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Sara Heinemann Roemaat is relieved from further representing Terrel D. Brooks. *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