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DISTRICT I

January 31, 2020

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

2019AP271-CRNM State of Wisconsin v. James Darrell Hayslett, Jr.
(L.C. # 2017CF2654)

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

James Darrell Hayslett, Jr., appeals a judgment convicting him of one count of armed robbery, as a party to a crime. He also appeals an order denying his motion for resentencing. Attorney Ann Auberry filed a no-merit report seeking to withdraw as appellate counsel. *See*

WIS. STAT. RULE 809.32 (2017-18),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Hayslett has responded to the report. Counsel then filed a supplemental no-merit report. After considering the no-merit reports and the response, and after conducting an independent review of the record, as mandated by *Anders*, we conclude that there are no issues of arguable merit that Hayslett could raise on appeal. Therefore, we affirm. See WIS. STAT. RULE 809.21.²

The no-merit report addresses whether there would be arguable merit to a claim that Hayslett's guilty plea was not knowingly, intelligently, and voluntarily entered. In order to ensure that a defendant is knowingly, intelligently, and voluntarily waiving the right to trial by entering a guilty plea, the circuit court must conduct a colloquy with the defendant to ascertain whether the defendant understands the elements of the crimes to which he is pleading guilty, the constitutional rights he is waiving by entering his plea, and the maximum potential penalties that could be imposed. See WIS. STAT. § 971.08, and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. A plea questionnaire and waiver-of-rights form that the defendant has acknowledged reviewing and understanding may reduce “the extent and degree of the colloquy otherwise required between the trial court and the defendant[.]” *State v. Hoppe*, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794 (citation omitted). Based on the circuit court's thorough plea colloquy with Hayslett and Hayslett's review of the plea questionnaire and waiver-of-rights form, there would be no arguable merit to an appellate challenge to his plea.

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

² Hayslett was convicted of two counts of burglary in a second case that was consolidated for sentencing. Hayslett has not pursued postconviction relief as to the burglary convictions.

The no-merit report addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced Hayslett to fifteen years of initial confinement and seven years of extended supervision. The circuit court considered appropriate factors in deciding the length of sentence to impose and explained its decision in accordance with the framework set forth in *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, there would be no arguable merit to an appellate challenge to the sentence.

The no-merit report next addresses whether the circuit court properly exercised its discretion in denying Hayslett's motion for resentencing based on alleged inaccurate information about Hayslett's willingness to name his co-actors and his cooperation with law enforcement. The circuit court's written decision thoroughly explains why these arguments are unavailing. Accordingly, there would be no arguable merit to these claims on appeal.

In his response, Hayslett argues that he is entitled to sentence modification because the circuit court did not consider his addiction to opiates as a mitigating factor when it imposed his sentence. The circuit court was informed of Hayslett's addiction when Hayslett's trial counsel argued that his drug issue was a partial explanation for his criminal actions. Hayslett also contends that his trial counsel should have informed the circuit court that he has a mental illness stemming from his addiction. However, Hayslett does not indicate that he informed his trial counsel of his alleged mental illness. Trial counsel does not provide ineffective assistance for failing to bring to the circuit court's attention information about which counsel is unaware. There would be no arguable merit to these claims.

Hayslett next argues in his response that the circuit court's restitution order should be amended. At the beginning of the sentencing hearing, the parties agreed that restitution should be set at \$4838.68, to be paid jointly and severally by Hayslett and his co-defendant. Hayslett did not object. Therefore, he waived any claim that the restitution amount was incorrect. *See State v. Leitner*, 2001 WI App 172, ¶41, 247 Wis. 2d 195, 633 N.W.2d 207. Moreover, there is no legal basis for Hayslett's request that his restitution be paid *only* from his prison wages. Therefore, we conclude that there would be no arguable merit to an appellate challenge to the restitution Hayslett has been ordered to pay.

Our independent review of the record also reveals no arguable basis for reversing the judgment of conviction and order denying postconviction relief.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Ann Auberry is relieved of any further representation of James Darrell Hayslett, Jr. 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