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DISTRICT II

February 5, 2020

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

2019AP1303-CRNM State of Wisconsin v. Steven M. Chavez (L.C. #2016CM535)

Before Neubauer, C.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).

Steven M. Chavez appeals from a judgment convicting him of disorderly conduct contrary to WIS. STAT. § 947.01(1) (2015-16). Chavez's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Chavez

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

received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The circuit court sentenced Chavez to seventy-one days time served. The court waived all court costs except the mandatory \$200 DNA surcharge.

The no-merit report addresses the following possible appellate issues: (1) whether Chavez's guilty plea was knowingly, voluntarily, and intelligently entered; (2) whether the circuit court misused its sentencing discretion; and (3) whether trial counsel provided effective assistance. After reviewing the record, we conclude that counsel's no-merit report properly analyzes these issues and correctly concludes that these issues are without arguable merit.

The plea colloquy complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The colloquy was thorough and informed Chavez of each of the constitutional rights waived by his plea. “[A] guilty plea waives all nonjurisdictional defects and defenses.” *State v. Popp*, 2014 WI App 100, ¶13, 357 Wis. 2d 696, 855 N.W.2d 471 (citation omitted).

The circuit court also engaged in a proper exercise of sentencing discretion after considering various sentencing factors. See *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (we review the sentence for a misuse of discretion); *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (sentencing factors discussed).

We normally decline to address claims of ineffective assistance of trial counsel if the issue was not raised by a postconviction motion in the circuit court. *State v. Machner*, 92

Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979). However, because appointed counsel asks to be discharged from the duty of representation, we must determine whether an ineffective assistance claim has sufficient merit to require appointed counsel to file a postconviction motion and request a *Machner* hearing. *State v. Allen*, 2010 WI 89, ¶88, 328 Wis. 2d 1, 786 N.W.2d 124 (broad scope of no-merit review suggests that we “should identify issues of arguable merit even if those issues were not preserved in the circuit court, especially where the ineffective assistance of postconviction counsel was the reason those issues were not preserved for appeal”).

During the plea colloquy, Chavez expressed satisfaction with his counsel. The no-merit report does not identify any inadequacies of trial counsel. A claim of ineffective assistance of counsel would lack arguable merit for appeal.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any arguably meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgment of conviction, and relieve Attorney Mark Schoenfeldt of further representation of Chavez in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Mark A. Schoenfeldt is relieved of further representation of Steven M. Chavez in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals