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February 3, 2020

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

2016AP2219-CRNM State of Wisconsin v. Joshua M. Buford (L.C. # 2014CF568)

Before Kessler, P.J., Kloppenburg 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).

Joshua M. Buford appeals a judgment convicting him of felony murder as a party to a crime, with misdemeanor battery as the predicate offense, and unlawful possession of a firearm by a person previously convicted of a felony. He also appeals an order denying his postconviction motion. Attorney Sara Heinemann Roemaat was appointed to represent Buford

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). Buford 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, as required by ***Anders***, we conclude that there are no issues of arguable merit that could be raised on appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether there would be arguable merit to a claim that Buford should be allowed to withdraw his guilty pleas because he did not knowingly, intelligently, and voluntarily enter the same. The circuit court conducted a colloquy with Buford that complied with WIS. STAT. § 971.08 and ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). Prior to the plea hearing, Buford discussed information pertinent to entering his pleas with his trial counsel, and he reviewed a plea questionnaire and waiver of rights form with his trial 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). Buford acknowledged that there was a factual basis to convict him of the crimes. 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 erroneously exercised its sentencing discretion when it sentenced Buford to a total of fifteen years of initial confinement and ten years of extended supervision. The record

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

establishes that the circuit court considered the general objectives of sentencing and applied the sentencing factors to the facts of this case, reaching a reasoned and 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 sentencing objectives and influenced its sentencing decision). There would be no arguable merit to a challenge to the sentence.

The no-merit report next addresses whether there would be arguable merit to a claim that Buford should be allowed to challenge the statements he made to the police. Buford filed a motion to suppress the statements but decided not to pursue the motion and, instead, entered a plea. It is well established that a person who enters a guilty plea waives the right to raise non-jurisdictional defects and defenses. *See* ***State v. Asmus***, 2010 WI App 48, ¶3, 324 Wis. 2d 427, 782 N.W.2d 435 (a guilty plea waives all non-jurisdictional arguments and defenses, including constitutional claims). Therefore, there would be no arguable merit to this claim.

The no-merit report addresses whether there would be arguable merit to an appellate challenge based on a claim that Buford was incompetent to proceed in the circuit court. We agree with the no-merit report's analysis of this issue and its conclusion that there would be no arguable merit to an appellate claim that Buford was incompetent to proceed in the circuit court.

Although appellate counsel did not address the fact that Buford was charged with felony murder as a party to the 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 the a crime because a person convicted of a crime as a party to the crime becomes a principal to the murder occurring as a

result of that crime. *See* ***State v. Krawczyk***, 2003 WI App 6, ¶25, 259 Wis. 2d 843, 657 N.W.2d 77. 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 Buford was convicted as a party to the crime.

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

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 Joshua M. Buford. *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