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DISTRICT II

February 26, 2020

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

2019AP811-CRNM State of Wisconsin v. Willie L. Gill (L.C. #2016CF615)

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).

Willie L. Gill appeals from a judgment convicting him of two counts of delivering heroin (three grams or less) as a second or subsequent offense. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738

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

(1967). Gill received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Gill was convicted following guilty pleas to two counts of delivering heroin (three grams or less) as a second or subsequent offense. The charges stemmed from his sale of heroin to a confidential informant on multiple occasions. Numerous additional charges were dismissed and read in.² The circuit court imposed an aggregate sentence of seven years of initial confinement and five years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether Gill's guilty pleas were knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Gill that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. A signed plea questionnaire and waiver of rights form was entered into the record, along with an attachment detailing the elements of the offenses. Furthermore, Gill acknowledged the accuracy of the allegations in the complaint, which provided a factual basis for the crimes charged. We agree with counsel that a challenge to the entry of Gill's guilty pleas would lack arguable merit.

² The additional charges were four counts of felony bail jumping, one count of delivering heroin (three grams or less) as a second or subsequent offense, one count of possessing heroin with intent to deliver (three grams or less) as a second or subsequent offense, one count of possessing THC with intent to deliver (200 grams or less) as a second or subsequent offense, one count of felon in possession of a firearm, and one count of maintaining a drug trafficking place.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the court’s sentencing decision had a “rational and explainable basis.” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The court considered the seriousness of the offenses, Gill’s character, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, which were aggravated by Gill’s criminal record and the read-in offenses, the sentence imposed does not “shock public sentiment and violate the judgment of reasonable people concerning what is right and proper.” *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Gill’s sentence would lack arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.³ 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 and relieve Attorney Hans P. Koesser of further representation 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.

³ There is a slight discrepancy between what the State promised to recommend at the plea hearing (“prison”) and what it actually recommended at sentencing (“a lengthy period of incarceration”). Upon review of the record, we are not persuaded that this discrepancy amounts to a material and substantial breach of the parties’ plea agreement. Indeed, Gill’s signed plea questionnaire and waiver of rights form expressly notes that the State would recommend “lengthy prison.”

IT IS FURTHER ORDERED that Attorney Hans P. Koesser is relieved of further representation of Gill in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals