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DISTRICT III

February 25, 2020

To:

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

2018AP2040-CRNM State of Wisconsin v. Dustin Thomas Ehrich
(L. C. No. 2015CF220)

Before Stark, P.J., Hruz and Seidl, 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).

Attorney Diane Lowe, appointed counsel for Dustin Ehrich, has 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). The no-merit report addresses whether there would be

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

arguable merit to a challenge to Ehrich's plea or sentencing. Ehrich was sent a copy of the report, but he has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Ehrich was charged with one count of repeated sexual assault of the same child. Pursuant to a plea agreement, Ehrich entered an *Alford*² plea, and the State limited its sentencing recommendation to ten years and six months of initial confinement and four years and six months of extended supervision, concurrent to Ehrich's sentence in a Minnesota case. The circuit court followed the State's recommendation, except that it imposed the sentence consecutive to Ehrich's Minnesota sentence.

First, the no-merit report addresses whether there would be arguable merit to a challenge to Ehrich's plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that satisfied the court's mandatory duties to personally address Ehrich and determine information such as Ehrich's understanding of the nature of the charge, the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea. See *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Ehrich's plea would lack arguable merit. A valid guilty

²An *Alford* plea is one in which the defendant pleads guilty while still maintaining his or her innocence. See *North Carolina v. Alford*, 400 U.S. 25 (1970).

plea constitutes a waiver of all nonjurisdictional defects and defenses. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Ehrich's sentence. We agree with counsel that this issue lacks arguable merit. Our review of a sentencing determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the circuit court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Ehrich's character, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum Ehrich faced, and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (holding that a sentence is unduly harsh or excessive "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances" (citation omitted)). The court awarded Ehrich 381 days of sentence credit, on counsel's stipulation. We discern no other basis to challenge the sentence imposed by the circuit court.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of WIS. STAT. RULE 809.32 and *Anders*.

Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Diane Lowe is relieved of any further representation of Dustin Ehrich 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