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DISTRICT II

March 18, 2020

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

2019AP98-CRNM State of Wisconsin v. Alexis L. Phillips (L.C. #2017CF126)

Before Neubauer, C.J., Reilly, P.J., and Davis, 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).

Alexis Phillips appeals from a judgment convicting him of manufacturing/delivering heroin (second or subsequent offense) contrary to WIS. STAT. § 961.41(1)(d)1 (2017-18).¹ Phillips’s appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Phillips 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 no-merit report addresses the following possible appellate issues: (1) whether Phillips’s guilty plea was knowingly, voluntarily and intelligently entered; and (2) whether the circuit court misused its sentencing discretion. After reviewing the record, we agree with counsel that these issues lack arguable merit for appeal.

With the exception of the failure to give the deportation warning,² 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 Phillips 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). No issue with arguable merit arises from the plea colloquy.

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

² Our January 29, 2020 order required appellate counsel to investigate and inform this court whether Phillips is a United States citizen. Counsel confirms that Phillips is a citizen. Therefore, the circuit court’s failure to give the deportation warning is not grounds for relief because Phillips cannot show that his guilty plea was likely to result in deportation.

The circuit court sentenced Phillips to a term of nine and one-half years (four and one-half years of initial confinement and five years of extended supervision). The circuit court engaged in a proper exercise of sentencing discretion after considering various sentencing factors. *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 observe that the circuit court declined to make Phillips eligible for either the Substance Abuse Program or the Challenge Incarceration Program. With regard to the Substance Abuse Program, the circuit court found no evidence that Phillips required drug treatment. With regard to the Challenge Incarceration Program, the circuit court questioned whether the program is effective. The sentencing court exercises its discretion to determine eligibility for the Challenge Incarceration Program and considers the same factors it considers for sentencing. *See State v. Owens*, 2006 WI App 75, ¶¶8-9, 291 Wis. 2d 229, 713 N.W.2d 187. The sentencing court is not required to make separate findings on the reasons for its eligibility decision, and we need only consider whether the overall sentencing rationale justifies the eligibility determination. *Id.*, ¶9.

Our review of the record supports the circuit court's discretionary decision that Phillips would not be eligible for the Challenge Incarceration Program. At sentencing, the circuit court considered the gravity of Phillips's offense: selling drugs as an economic enterprise unrelated to his own addiction and a lengthy history of criminal offenses. Clearly, the circuit court intended for Phillips to serve the term imposed without early release. No issue with arguable merit arises from the court's refusal to deem Phillips eligible for the Challenge Incarceration Program.

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 Patricia Sommer of further representation of Phillips 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 Patricia Sommer is relieved of further representation of Alexis Phillips in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals