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DISTRICT II

April 15, 2020

To:

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

2019AP346-CRNM State of Wisconsin v. James M. McDonald (L.C. #2016CF1244)

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).

Attorney Cheryl A. Ward, appointed counsel for James M. McDonald, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). McDonald was sent a copy of the

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

report and has not filed a response. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. Upon consideration of the report and an independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

McDonald was charged with six counts of felony bail jumping and three counts of misdemeanor bail jumping, all based on McDonald's alleged failures to comply with the terms of bond. The parties entered into a plea agreement under which McDonald pled guilty to three of the six felony counts. The State agreed to dismiss and read in all remaining counts along with a battery charge in a separate matter. The State further agreed that it would recommend a prison sentence but stand silent on the length of sentence. The circuit court accepted McDonald's guilty pleas to three of the felony counts and dismissed the other charges. The court imposed a five-year prison sentence consisting of three years of initial confinement and two years of extended supervision on one of the felony bail jumping counts. On the remaining two counts, the court imposed and stayed four-year sentences, with three years of probation consecutive to the non-stayed, five-year sentence.

The no-merit report addresses whether McDonald's plea was knowing, intelligent, and voluntary. We agree with counsel that there is no arguable merit to this issue. The plea colloquy sufficiently complied with the requirements of WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, relating to the nature of the charges, the range of punishments, the rights McDonald was waiving, and other matters. The record shows no other arguable ground for plea withdrawal.

We note that both McDonald's plea questionnaire and counsel's oral summary of the plea agreement at the start of the plea hearing indicated that McDonald would plead guilty to counts 1 through 3 in the information. However, during the course of the plea hearing, McDonald stated that he preferred to plead guilty to count 5 instead of count 1, and the State agreed to this modification to the plea agreement. The plea hearing transcript and the judgment of conviction leave no doubt that McDonald in fact pled guilty to count 5 instead of count 1, and the plea transcript shows that the circuit court fulfilled its plea colloquy duties with respect to count 5.

The no-merit report next addresses whether the circuit court erroneously exercised its sentencing discretion. We agree with counsel that there is no arguable merit to this issue. The total sentence was well within the maximum allowed, and the circuit court discussed the required sentencing factors along with other relevant factors. *See State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. The record shows no other arguable basis for McDonald to challenge his sentence.

Our review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Cheryl A. Ward is relieved of any further representation of James M. McDonald 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