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DISTRICT II

April 29, 2020

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

2019AP1932-CRNM State of Wisconsin v. William S. Hess (L.C. #2017CF1157)

Before Neubauer, C.J., Gundrum and Davis, 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).

William S. Hess appeals from a judgment convicting him of operating a motor vehicle while intoxicated (OWI) as a ninth 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 (1967). Hess filed a response. Counsel then filed a supplemental no-merit report. After reviewing the record, counsel's reports, and Hess' response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Hess was convicted following a guilty plea to OWI as a ninth offense. He was observed driving recklessly during rush hour traffic, swerving all over the road. A subsequent blood draw revealed a blood alcohol level of 0.236. For his actions, the circuit court imposed a sentence of seven years of initial confinement and five years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether Hess' guilty plea was knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Hess 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 906.² In addition, a signed plea questionnaire and waiver of rights form was entered into the record, along with an attachment detailing the elements of the offense. We agree with counsel that a challenge to the entry of Hess' guilty plea would lack arguable merit.

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

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

² The circuit court failed to provide the deportation warning required by WIS. STAT. § 971.08(1)(c). This failure does not present a potentially meritorious issue for appeal, however, as there is no indication that Hess' plea is likely to result in his deportation, exclusion from admission to this country, or denial of naturalization.

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 offense, Hess’ 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, 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 Hess’ sentence would lack arguable merit.

As noted, Hess filed a response to the no-merit report. In it, he complains about the length of his sentence, which we have already addressed. He also raises potential defenses to the charge, which he forfeited by entering his plea. See *State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886. Finally, he suggests that his counsel may have been ineffective. Not only is this suggestion unsupported by the record, but it is also belied by Hess’ statement at the plea hearing indicating that he was satisfied with counsel’s representation. In any event, we are not persuaded that Hess’ response presents any issues of arguable merit.

Our independent review of the record does not disclose any potentially 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 and relieve Attorney Bradley J. Lochowicz 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.

IT IS FURTHER ORDERED that Attorney Bradley J. Lochowicz is relieved of further representation of Hess in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals