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DISTRICT IV

April 30, 2020

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

2018AP2464-CRNM State v. Gregory A. Kopelke (L.C.# 2017CF269)

Before Fitzpatrick, P.J., Blanchard, and Nashold, 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 Thomas Aquino, appointed counsel for Gregory Kopelke, 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

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

would be arguable merit to a challenge to Kopelke's plea or sentencing. Kopelke was sent a copy of the report, but 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.

Kopelke was charged with two counts of homicide by use of a motor vehicle with a detectable amount of a controlled substance in the blood; one count of causing great bodily harm by use of a motor vehicle with a detectable amount of a controlled substance in the blood; two counts of operating after revocation, causing death; and one count of operating after revocation, causing great bodily harm. Pursuant to a plea agreement, Kopelke pled no contest to two counts of homicide by use of a motor vehicle with a detectable amount of a controlled substance in the blood and one count of causing great bodily harm by use of a motor vehicle with a detectable amount of a controlled substance in the blood; the remaining counts were dismissed and read in; and the State limited its sentencing recommendation to a total of twenty years of initial confinement and fifteen years of extended supervision. The court sentenced Kopelke to a total of twenty-four years of initial confinement and twenty years of extended supervision.

First, the no-merit report addresses whether there would be arguable merit to a challenge to Kopelke'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, together with the plea questionnaire that Kopelke signed, satisfied the court's mandatory duties to personally address Kopelke and determine information such as Kopelke's understanding of the nature of the charges and 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, 30, 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 Kopelke's plea would lack arguable merit. A valid guilty 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 Kopelke's sentence. We agree with counsel that this issue lacks arguable merit. Our review of a sentence determination begins "with the presumption that the [circuit] 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 court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offenses, Kopelke'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 Kopelke 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 (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'" (quoted source omitted)). The court awarded Kopelke 279 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 ***Anders*** and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Thomas Aquino is relieved of any further representation of Gregory Kopelke 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