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DISTRICT II

May 6, 2020

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

2018AP2330-CRNM State of Wisconsin v. Michael H. Petersen (L.C. #2017CF706)

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).

Michael H. Petersen appeals from a judgment convicting him of first-degree reckless homicide (delivering drugs) as a repeater offender contrary to WIS. STAT. § 940.02(2)(a) (2017-

18).¹ Petersen’s appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Petersen 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 circuit court sentenced Petersen to a thirteen-year term (eight years of initial confinement and five years of extended supervision). Petersen received sentence credit.

The no-merit report addresses the following possible appellate issues: (1) whether Petersen’s guilty plea was knowingly, voluntarily and intelligently entered and (2) whether the circuit court misused its sentencing discretion. After reviewing the record, we conclude that counsel’s no-merit report properly analyzes these issues and correctly determines that these issues lack arguable merit.

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 Petersen of each of the constitutional rights waived by his plea.² “[A] guilty plea waives all nonjurisdictional defects and defenses.”

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

² Our review of the record reveals that during the plea colloquy the circuit court did not give the deportation warning set out in WIS. STAT. § 971.08(1)(c). Counsel’s no-merit report recognizes this defect, but notes that Petersen is a United States citizen. No issue with arguable merit for appeal is present.

(continued)

State v. Popp, 2014 WI App 100, ¶13, 357 Wis. 2d 696, 855 N.W.2d 471 (citation omitted). The circuit court established that Peterson was a repeat offender under WIS. STAT. § 939.62(2).

The circuit court also 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). Petersen did not receive an enhanced sentence arising from his status as a repeat offender.

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 George Tauscheck of further representation of Petersen in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is affirmed pursuant to WIS. STAT. RULE 809.21.

The circuit court also did not give the *Hampton* warning that “the defendant understands that the court is not bound by the terms of the plea agreement” including recommendations from the district attorney. *State v. Hampton*, 2004 WI 107, ¶¶37-38, 40-43, 274 Wis. 2d 379, 683 N.W.2d 14. The circuit court imposed the sentence recommended by the State in the plea agreement. *State v. Johnson*, 2012 WI App 21, ¶¶12-14, 339 Wis. 2d 421, 811 N.W.2d 441. This issue lacks arguable merit for appeal.

IT IS FURTHER ORDERED that Attorney George Tauscheck is relieved of further representation of Michael H. Petersen in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals