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May 19, 2020

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

2019AP1684-CRNM State of Wisconsin v. Brad Lee Batcher (L.C. # 2017CF1167)

Before Brash, P.J., Dugan and Donald, 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).

Brad Lee Batcher appeals from a judgment of conviction for four counts of delivery of cocaine, as a party to the crime, and two counts of delivery of heroin, as a party to the crime, and from an order denying his postconviction motion for sentence modification. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18),¹ and

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

Anders v. California, 386 U.S. 738 (1967). Batcher has filed a response to the no-merit report. See RULE 809.32(1)(e). Upon consideration of these submissions and an independent review of the record as mandated by *Anders*, we conclude that the judgment and order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. See WIS. STAT. RULE 809.21.

Batcher was charged with twelve counts of being a party to the crime of delivery of varying amounts of cocaine and heroin over nearly a one-year period. All counts were charged with a penalty enhancer of being a second or subsequent drug conviction. The charges stemmed from a confidential informant's controlled buys. Batcher pled guilty to six counts and the remaining six counts were dismissed as read-ins at sentencing. The penalty enhancer on each count was dismissed. The prosecution agreed to make a sentencing recommendation for prison time, leaving the amount of time to the discretion of the sentencing court. Batcher was sentenced to two years of initial confinement and two years of extended supervision on each count, to be served consecutively. He was made eligible for the Substance Abuse Program after serving eight years of confinement. Appropriate sentence credit was awarded.

Batcher filed a postconviction motion for sentencing modification arguing that the sentence was unduly harsh in light of Batcher's limited role as a middleman in the distribution of drugs and the shorter sentences that the sentencing court imposed on two of Batcher's suppliers. The sentencing court denied Batcher's motion pointing out that it found Batcher's conduct just as aggravating as that of his suppliers because of his intrinsic involvement in buys that resulted in substantial amounts of cocaine and heroin being pumped into the community. The court also noted that Batcher was convicted of six offenses in comparison to the two or three convictions of his suppliers.

The no-merit report addresses the potential issues of whether Batcher's pleas were freely, voluntarily, and knowingly entered, whether the sentences were the result of an erroneous exercise of discretion, and whether the denial of the postconviction motion was a proper exercise of discretion. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further.

Batcher's response first discusses a serious motorcycle accident in which he was involved after the commission of his crimes. He suggests that the head injury he suffered in that accident bears on his ability to understand the proceeding and assist in his defense and is highly relevant to the sentencing court's consideration of his future dangerousness to the community. He speculates that because he was in a coma for some unspecified time after the accident, it "bodes ill for his future and the likelihood of permanent brain damage." He thinks his trial and appellate counsel should have noticed his shortcomings. He also points out that he did not author his response to the no-merit report and would not have been able to do so.

With this background of information, we turn to consider his specific itemization of potential meritorious issues. Related to his claim that the motorcycle accident left him impaired with respect to his ability to understand the proceeding and assist in his own defense, Batcher claims that his trial counsel was ineffective for not seeking a competency evaluation and for not investigating the seriousness of his injury as a highly relevant sentencing factor, that his plea was involuntary because he was incompetent to proceed, and that his appellate counsel failed to seek a postconviction competency evaluation or investigate the extent of his injuries as relevant to a motion for sentence modification. His claims are not meritorious because there is no indication in the record that Batcher was impaired in any respect as to his understanding of the proceeding or ability to assist in his defense or quest for postconviction relief. Batcher was personally

addressed at the preliminary hearing where he waived his right to the preliminary hearing, the plea hearing, and the sentencing hearing. Not once did he give a response suggesting any language or comprehension difficulties. During the plea hearing, Batcher specifically acknowledged that he was able to understand the proceeding. Counsel is required to raise competency only when there is a reason to doubt the defendant's competency, *see State v. Johnson*, 133 Wis. 2d 207, 220, 395 N.W.2d 176 (1986), and the record reflects no reason for trial counsel or appellate counsel to have questioned Batcher's competency.

Batcher also claims that his plea colloquy was perfunctory and therefore, defective. We conclude that the circuit court properly relied on Batcher's reading and understanding of the plea questionnaire and his responses during the colloquy.

Batcher suggests the sentencing court violated his right to allocution. He describes the court as having "cut Mr. Batcher off in the middle of his allocution." The sentencing transcript reflects Batcher's statement:

THE DEFENDANT: I'd just like to apologize to the [c]ourt for my mistakes, everything that's happened. I'm very sorry about that. And as Mr. Bihler [trial counsel] said earlier, this is probably one of the best things, honestly, that's happened to me because it's given me a chance to sober up, really realize what I'd done, and I could have possibly been dead myself, honestly, you know, from my drug use. I just really—I just really want to say sorry to everybody. I made a huge mistake. I just ...

THE COURT: Well, Mr. Batcher, anytime I sentence anybody, I have to look at how serious the crime is....

The transcript suggests that Batcher simply trailed off in his remarks, not that the court cut him off. Moreover, Batcher does not explain what additional remarks he had. Therefore, there is no arguable merit to a claim that Batcher was not afforded his right to allocution.

Batcher suggests several issues regarding the inadequacy of the presentence investigation report (PSI): the PSI was deficient in not making it clear whether its recommendation was for concurrent or consecutive sentences; trial counsel was ineffective for failing to move for a new PSI; and the sentencing court was under-informed as to Batcher's character because the PSI was poorly done. Trial counsel and the sentencing court criticized the PSI on several points. However, the PSI is just an aid to the sentencing court and not binding in any way on the sentencing court. *See State v. Hall*, 2002 WI App 108, ¶16, 255 Wis.2d 662, 648 N.W.2d 41. Here Batcher clarified a few background facts in the PSI. But he does not identify any actual inaccurate information within the PSI or the sentencing court's reliance on inaccurate information. Although the sentencing court wished that the PSI had provided greater detail in some areas, there is no arguable merit to a claim that the perceived inadequacies in the PSI affected sentencing.

Batcher claims that his appellate counsel was ineffective for "opting for a sentence modification alone, rather than to seek plea withdrawal." Batcher does not explain any grounds for plea withdrawal. To the extent he believes appellate counsel should have sought plea withdrawal because Batcher was not competent or the plea colloquy was defective, we have already considered and rejected those grounds as without merit.

Finally, the remainder of Batcher's response is an exposition on government entrapment, outrageous government conduct, and the perception that the sentence is unconscionably lengthy for a mere middleman in drug transactions fueled and perpetuated by a task force's intensive drug investigation. The sentences here evidence a proper exercise of discretion. Batcher's attempt to establish himself as a victim of government conduct does not give footing to any issue of arguable merit.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment of conviction and the order denying the postconviction motion, and discharges appellate counsel of the obligation to represent Batcher further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction and order denying postconviction relief are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Christopher D. Sobic is relieved from further representing Brad Lee Batcher in this appeal. *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