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DISTRICT IV

June 4, 2020

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

2019AP490-CRNM State of Wisconsin v. Xavier D. Davis (L.C. # 2018CF444)

Before Fitzpatrick, P.J., Kloppenburg 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).

Attorneys Suzanne Hagopian and Cary Bloodworth, appointed counsel for Xavier Davis, have 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 would be arguable merit to a challenge to Davis's plea or sentencing. Davis 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.

Davis was charged with one count of attempted first-degree intentional homicide and one count of first-degree recklessly endangering safety by use of a dangerous weapon, both as a party to a crime. Pursuant to a plea agreement, the State filed an amended information that reduced the attempted homicide charge to first-degree reckless injury as a party to a crime. Davis pled guilty to the reckless injury charge, and the State moved to dismiss the recklessly endangering safety charge and a cocaine possession charge in a separate case. The State limited its sentencing recommendation to eight years of initial confinement and eight years of extended supervision, concurrent with Davis's revocation sentence in another case. The court accepted Davis's plea to the reckless injury charge, dismissed the recklessly endangering safety and cocaine charges, and followed the State's sentencing recommendation.

First, the no-merit report addresses whether there would be arguable merit to a challenge to Davis'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

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

court conducted a plea colloquy that, together with the plea questionnaire that Davis signed, satisfied the court's mandatory duties to personally address Davis and determine information such as Davis's understanding of the nature of the charge 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 Davis'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 Davis'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 offense, Davis'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 Davis 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

imposed $1,000 in restitution as requested by the State and undisputed by Davis. The court awarded Davis 186 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 Attorneys Suzanne Hagopian and Cary Bloodworth are relieved of any further representation of Xavier Davis 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