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DISTRICT II

June 17, 2020

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

2019AP326-CRNM State v. Nicholas D. Hoeft (L.C. #2018CF80)

Before Neubauer, C.J.¹

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).

Nicholas D. Hoeft appeals from a judgment of conviction entered upon his guilty pleas to possession of drug paraphernalia as a repeater and disorderly conduct as a repeater. Hoeft's

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Hoeft was advised of his right to file a response and has elected not to do so. Upon consideration of the no-merit report and our independent review of the record, we conclude that the judgment 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.

Hoeft was charged with the following three offenses, all as a WIS. STAT. § 939.62(1) habitual offender: count one, felony bail jumping, a Class H felony; count two, possession of drug paraphernalia, an unclassified misdemeanor; and count three, disorderly conduct, a Class B misdemeanor. Pursuant to a negotiated settlement, he pled guilty to the two misdemeanor counts, both with the repeater enhancer, and the State moved to dismiss and read in the felony, and agreed to recommend probation. At sentencing, the circuit court imposed a two-year bifurcated sentence on count three, with one year of initial confinement followed by one year of extended supervision. On count two, the court withheld sentence and ordered one year of consecutive probation.

The no-merit report discusses whether Hoeft's guilty pleas were knowing, intelligent, and voluntary. The circuit court's plea-taking duties are set forth in WIS. STAT. § 971.08(1) and summarized in *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the court engaged in a colloquy that, together with the plea questionnaire signed by Hoeft, satisfied the court's mandatory duties. *See State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. We agree with appellate counsel's conclusion that no issue of arguable merit arises from the entry of Hoeft's guilty pleas.

Appellate counsel's no-merit report also discusses whether the circuit court properly exercised its sentencing discretion. It is a well-settled principle of law that sentencing is committed to the circuit court's discretion and our review is limited to determining whether the court erroneously exercised that discretion. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. In fashioning its sentence, the court considered the gravity of the offense, Hoeft's character, including the length and nature of his criminal history, and the need to protect the public. See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court identified protection of the public and punishment as its primary objectives. The court considered appropriate factors, did not consider improper factors, and reached a rational result. Further, under the circumstances of this case, it cannot reasonably be argued that Hoeft's sentence is so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with appellate counsel that a challenge to Hoeft's sentence would lack arguable merit.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to further represent Hoeft on appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Cheryl A. Ward is relieved from further representing Nicholas D. Hoeft in this appeal. 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