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DISTRICT IV

August 13, 2020

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

2019AP1041-CRNM State of Wisconsin v. Reginald H. Patton (L.C. # 2016CF1529)

Before Fitzpatrick, P.J., Blanchard, and Graham, 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 Patricia Sommer, appointed counsel for Reginald Patton, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Patton was sent a copy of the report and has not

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

filed a response. Upon consideration of the report and an independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

Patton was initially charged with second-degree sexual assault. According to the complaint allegations, Patton and three other men took turns having sexual intercourse with a seventeen-year-old girl while she was under the influence of drugs and incapable of giving consent. Patton agreed to plead guilty to amended charges of third-degree sexual assault and exposing genitals to a child, reducing his overall prison exposure from forty years to thirteen years and six months. *See* WIS. STAT. §§ 940.225(2) and (3), 948.10(1)(a), and 939.50(3) (2013-14).

The circuit court sentenced Patton to the maximum term on the third-degree sexual assault charge, five years of initial confinement and five years of extended supervision. *See* WIS. STAT. §§ 940.225(3), 939.50(3)(g), and 973.01(2)(b)7. (2013-14). On the exposing genitals charge, the court sentenced Patton to one and one-half years of initial confinement and one and one-half years of extended supervision, six months less than the maximum. *See* WIS. STAT. §§ 948.10(1)(a), 939.50(3)(i), and 973.01(2)(b)9. (2013-14). The court imposed the sentences consecutive to one another and consecutive to any other sentence Patton was currently serving.

The no-merit report addresses whether Patton's plea was knowing, intelligent, and voluntary. We agree with counsel that there is no arguable merit to this issue. The plea colloquy that the circuit court conducted, including the court's references to Patton's plea questionnaire and waiver of rights form, complied with the requirements of WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The record shows no other arguable ground for plea withdrawal.

The no-merit report next addresses whether the circuit court erroneously exercised its sentencing discretion. We agree with counsel that there is no arguable merit to this issue. The circuit court discussed the required sentencing factors along with other relevant factors, and the court did not rely on any inappropriate factors. *See State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. Among other considerations, the court noted that Patton’s history of prior offenses included a previous conviction for sexual assault of a child. As described in the presentence investigation report, that assault involved circumstances similar in multiple respects to the circumstances of the sexual assault here.

As stated above, the circuit court imposed a combined total sentence that was close to the overall maximum term of imprisonment allowed. However, based on the record, we see no merit to arguing that the court erroneously exercised its discretion by imposing an excessive sentence. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975) (explaining that the circuit court misuses its sentencing discretion when a 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.”). The record shows no other arguable basis for Patton to challenge his sentence.

Our review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Patricia Sommer is relieved of any further representation of Reginald Patton 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