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DISTRICT IV

September 17, 2020

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

2019AP605-CRNM State of Wisconsin v. Chad E. Phillips (L.C. # 16CF1560)

Before Kloppenburg, 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).

Attorney Patricia Sommer, appointed counsel for Chad E. Phillips, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967).

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

Counsel provided Phillips with a copy of the report, and Phillips has filed a response. I conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After my independent review of the record, I conclude there is no arguable merit to any issue that could be raised on appeal.

Phillips pled guilty to two counts of battery. The circuit court imposed consecutive sentences of nine months in prison.

The no-merit report addresses whether Phillips' plea was entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Phillips was waiving, and other matters. The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report also addresses whether the circuit court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the circuit court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

In Phillips' response to the no-merit report he asserts that he would not have pled guilty if he had known that he would not be "off bail" after doing so, and instead he would have gone to trial. It is not clear if Phillips is saying that he thought he would be off bail for the period after the plea and before sentencing, or if Phillips is instead saying that he thought he would be sentenced right away, and thus be off bail, although now serving a sentence.

Whichever it is, however, Phillips does not explain why being off bail mattered with respect to his entry of a plea. He does not explain why he would have rejected a plea agreement (one that dismissed the one felony count and two additional misdemeanors and capped the State's sentencing recommendation at less than the maximum) simply because he would remain released on bail after the pleas. Without such an explanation, there is no arguable merit to this issue.

Phillips also asserts that as part of the plea agreement the State agreed not to pursue further charges for bail jumping, but that soon after the plea he was arrested for bail jumping, as charged in case No. 2016CF2310. It is not clear what relief could be granted on such a claim at this point, as that case was dismissed as part of a later plea bargain in the case that underlies his appeal No. 2019AP604. There does not appear to be arguable merit to this issue.

Finally, Phillips asserts that the State breached the plea agreement at sentencing. Phillips was sentenced in this case and the case underlying the other appeal at the same proceeding. While Phillips appears to be correct that the State breached the plea agreement as to the battery counts in the case subject to this appeal, the State's overall recommendation was consistent with the effect of the two plea agreements together.

Specifically, the plea agreement as to the battery counts in this case called for the State to recommend a "total" of seven months imprisonment if Phillips was receiving treatment. If he was not receiving treatment, the recommendation would be nine months. Although it was not stated whether that would be nine months total or nine months on each count consecutively, the fact that the State did not differentiate that recommendation from the "total" of seven months suggests that it was for a total of nine months.

In the other case, the plea agreement was to cap the initial confinement recommendation at three years. It was not clear whether that was to be three years in addition to the imprisonment on the battery counts, or three years including the imprisonment on the battery counts.

At sentencing, on the battery counts in this case the State first recommended two consecutive seven-month terms, consecutive to the sentences to be imposed in the other cases. After Phillips questioned whether that was consistent with the agreement, the parties and the circuit court were unable to determine what the agreement had been.

As to the other case, the State then recommended one year of initial confinement on count one and a consecutive ten months of confinement on count two. Then, as to count three, the State recommended one year of confinement concurrent to the battery sentences. Thus, the State's total sentence recommendation for initial confinement across both cases was three years, consisting of consecutive terms of seven months, seven months, ten months, and one year (totaling three years), with the final concurrent year controlled by the total of fourteen months for the battery counts.

Turning to whether that recommendation was consistent with the plea agreements, if the plea agreement in the other case was to cap the total recommendation for confinement across both cases at three years, then that is what the State recommended. If instead the agreement in the other case was to cap the confinement recommendation at three years in addition to the imprisonment on the battery counts, then the State actually recommended less than the total cap it had agreed to across both cases. Accordingly, there is no arguable merit to this issue.

My 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 Sommer is relieved of further representation of Phillips 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