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DISTRICT II

October 21, 2020

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Bobby G. Lockett
1436 Grand Ave.
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You are hereby notified that the Court has entered the following opinion and order:

2019AP1683-CRNM State of Wisconsin v. Bobby G. Lockett (L.C. #2014CF517)

Before Neubauer, C.J., Gundrum and Davis, 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).

Bobby G. Lockett appeals from a judgment convicting him of felon in possession of a firearm and possession with intent to deliver cocaine (>1-5g), both as party to a crime. Lockett's appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32

(2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Lockett has exercised his right to file a response. Upon consideration of the no-merit report, Lockett's response, and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

On April 8, 2014, C.M., Lockett's ex-girlfriend, reported to police that the two were arguing and Lockett threatened to shoot her, that as the argument escalated, he pulled out a gun and pointed it at her head, and that, as a convicted felon, Lockett was prohibited from possessing a firearm. Lockett was taken into custody.

Police sought a search warrant based on an affidavit reciting what C.M. had told police. On April 9 the police executed the warrant at the residence where Lockett allegedly resided with his current girlfriend. They recovered a handgun, ammunition, marijuana, crack cocaine, and drug-selling paraphernalia. Lockett was charged in an eight-count complaint.

C.M. later recanted the report she made to police. The defense moved to suppress the evidence arguing that the warrant was based on false evidence. The investigating officer who drafted the affidavit and sought the warrant testified at the suppression hearing that he was unaware that C.M.'s report was false before drafting his affidavit. Lockett testified that, while he still had some belongings at the searched address, he had not lived there for months. The court denied the motion on grounds that he had no expectation of privacy in the premises.

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

Luckett entered no-contest pleas to felon in possession of a firearm and possession with intent to deliver cocaine. The remaining charges as well as the penalty enhancers on the two counts to which he pled were to be dismissed and read in.

Presentence, Luckett moved to withdraw his pleas, asserting that he did not understand the plea process due to being “heavily medicated” for medical and mental health issues. After a hearing on Luckett’s claim, the court concluded that the facts of record did not support his claim and denied the motion. The court later sentenced him to a total of four years’ initial confinement and three years’ extended supervision. This no-merit appeal followed.

The no-merit report considers whether (1) Luckett’s no-contest plea was knowingly, intelligently, and voluntarily entered, including the aspect of withdrawing his plea and (2) there is any arguably meritorious claim for challenging the sentence imposed. Counsel has thoroughly examined the issues. As we agree with her analyses and conclusions, we need not discuss these issues further.

Luckett’s response contends that his arrest, charging, and conviction were not supported by sufficient evidence; he was not served with a copy of the “Probable Cause Determination form”;² his conviction stemmed from improperly admitted unspecified hearsay and evidence that violated the exclusionary rule; the police did not read him his *Miranda*³ rights; his defense counsel was ineffective because she was aware—apparently before police knew—that C.M.

² See *Miranda v. Arizona*, 384 U.S. 436 (1966).

³ Luckett appeared in person at his preliminary hearing at which probable cause was found.

would recant and committed a *Brady*⁴ violation by not sharing that information; the circuit court “should have brought to light” exonerating facts to prove he was not guilty; and postconviction counsel was ineffective for failing to thoroughly examine the record and raise these issues before filing the no-merit appeal.

Lockett’s no-contest pleas, knowingly and understandingly made, constitute a waiver of all nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *See State v. Kraemer*, 156 Wis. 2d 761, 765, 457 N.W.2d 562 (Ct. App. 1990). As his arguments have no legal footing, his postconviction counsel cannot have been ineffective for not raising them.

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

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

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved from further representing Lockett in this appeal. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition opinion and order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

⁴ *See Brady v. Maryland*, 373 U.S. 83 (1963).