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DISTRICT IV

October 29, 2020

To:

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

2019AP1217-CRNM State of Wisconsin v. Chad C. Glynn (L.C. # 2018CF390)

Before Fitzpatrick, P.J., Graham, 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).

Attorney Patricia Sommers, appointed counsel for Chad Glynn, has 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

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

would be arguable merit to a challenge to Glynn's plea or sentencing. Glynn was provided 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. Accordingly, we affirm.

Glynn was charged with operating while intoxicated (OWI) as a seventh offense; operating with a prohibited alcohol concentration as a seventh offense; operating a motor vehicle while revoked; resisting an officer; carrying a concealed weapon; and threatening a law enforcement officer. Pursuant to a plea agreement, Glynn pled guilty to OWI seventh, resisting, and carrying a concealed weapon. The remaining charges were dismissed and read in, and the parties jointly recommended a sentence of three years of initial confinement and five years of extended supervision, a $1,819 fine plus costs, and eligibility for the Challenge Incarceration and Substance Abuse Programs. The court followed the joint sentencing recommendation, except that it found Glynn ineligible for programming.

The no-merit report addresses whether there would be arguable merit to a challenge to Glynn'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, or that there was ineffective assistance of counsel, ***State v. Bentley***, 201 Wis. 2d 303, 311, 548 N.W.2d 50 (1996). Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Glynn signed, satisfied the court's mandatory duties to personally address Glynn and determine information such as Glynn's understanding of the nature of the charges 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 Glynn's plea would lack arguable merit.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Glynn'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 offenses, Glynn's character and criminal history, 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 Glynn 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 (stating that 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)). We discern no other basis to challenge the sentence imposed by the circuit court.[2]

[2] By prior order, this court sought further input from no-merit counsel as to whether there would be arguable merit to a challenge to the circuit court's determination as to Glynn's program eligibility. Counsel then informed this court that Glynn does not wish to pursue that issue. Accordingly, we do not address it further.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgments 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 judgments of conviction are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Patricia Sommers is relieved of any further representation of Chad Glynn 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