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DISTRICT IV

November 5, 2020

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

2019AP1965-CRNM State of Wisconsin v. Gavin Veium (L.C. # 2018CF1285)

Before Blanchard, 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 Thomas Aquino, appointed counsel for Gavin Veium, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18)[1] and

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

Anders v. California, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to Veium's plea or sentencing. Veium 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.

Veium was charged with homicide by intoxicated use of a motor vehicle, second-degree reckless homicide, and homicide by use of a motor vehicle with a detectable amount of a restricted controlled substance in his blood. Pursuant to a plea agreement, Veium pled no-contest to homicide by use of a motor vehicle with a detectable amount of a controlled substance in his blood, and the State moved to dismiss the remaining charges. The court sentenced Veium to ten years of initial confinement and five years of extended supervision.

The no-merit report addresses whether there would be arguable merit to a challenge to Veium'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. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Veium signed, satisfied the court's mandatory duties to personally address Veium and determine information such as Veium's understanding of the nature of the charge and the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea.[2] *See* ***State v. Hoppe***, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161,

[2] As the no-merit report notes, the circuit court failed to personally advise Veium of the deportation consequences of his plea, as mandated by WIS. STAT. § 971.08(1)(c). The no-merit report (continued)

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 Veium's plea would lack arguable merit. A valid guilty plea constitutes a waiver of all nonjurisdictional defects and defenses. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

Next, the no-merit report addresses whether there would be arguable merit to a challenge to Veium's sentence. We agree with counsel that this issue lacks arguable merit. Our review of a sentence determination begins "with the presumption that the trial 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 circuit court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offense, Veium's character, 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 Veium 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 (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'"

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also states, however, that no-merit counsel is unaware of any basis for a claim that Veium's plea is "likely to result" in his "deportation, exclusion from admission to this country or denial of naturalization." *See* § 971.08(2). Based on counsel's representation, there is no basis to think that Veium's plea is likely to have any of these results and accordingly we conclude that a motion for plea withdrawal on this basis would lack arguable merit.

(quoted source omitted)). The court granted Veium 133 days of sentence credit, on counsel's stipulation. We discern no erroneous exercise of the court's sentencing discretion.

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

IT IS FURTHER ORDERED that Attorney Thomas Aquino is relieved of any further representation of Gavin Veium 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