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DISTRICT IV

November 19, 2020

To:

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Circuit Court Judge
Rock County Courthouse
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Janesville, WI 53545

Hon. Karl Hanson
Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2019AP994-CRNM State of Wisconsin v. Troy Matthew Tofte (L.C. # 2015CF2467)

Before Blanchard, Kloppenburg, 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 Susan E. Alesia, appointed counsel for Troy Matthew Tofte, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18);¹ *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there would be arguable merit to a challenge to Tofte’s plea or sentencing, or the order denying Tofte’s postconviction motion for resentencing. Tofte was sent a copy of the report, and has filed a response. By prior order, this court directed no-merit counsel to address whether there would be arguable merit to a challenge to the restitution ordered by the circuit court, and counsel has filed a supplemental no-merit report concluding that this issue would lack arguable merit. Upon independently reviewing the entire record, as well as the no-merit report, response, and supplemental no-merit report, we agree with counsel’s assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Tofte was charged with three counts of fraud against a financial institution; eighteen counts of theft by bailee; and fifteen counts of theft by fraud. Pursuant to a plea agreement, Tofte pled guilty to fifteen theft counts; the remaining counts were dismissed and read-in for sentencing purposes; and the State agreed to limit its sentencing recommendation to ten years of initial confinement. The court sentenced Tofte to a total of seven-and-one-half years of initial confinement and eight years of extended supervision, plus six years of probation. Tofte moved for resentencing, arguing that the circuit court failed to consider the need to protect the public as

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

part of its sentencing determination. The circuit court determined that the sentencing court had properly exercised its sentencing discretion, and denied the motion.²

First, the no-merit report addresses whether there would be arguable merit to a challenge to Tofte'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 Tofte signed, satisfied the court's mandatory duties to personally address Tofte and determine relevant information, such as Tofte'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 Tofte's plea would lack arguable merit. A valid guilty plea constitutes a waiver of all nonjurisdictional defects and defenses, aside from any suppression ruling. *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 Tofte'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.

² The Honorable James P. Daley imposed the sentence. The Honorable Karl Hanson denied the postconviction motion.

1984). Here, the court explained that it considered facts pertinent to the appropriate sentencing factors and objectives, including the severity of the offenses, Tofte's character, the impact on the victims, and the need for specific deterrence. See *State v. Gallion*, 2004 WI 42, ¶¶39-46 & 43 n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The sentence was within the maximum Tofte 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” (quoted source omitted)). We discern no other basis to challenge the sentence imposed by the circuit court.³

Finally, the no-merit report addresses whether there would be arguable merit to a challenge to the order denying Tofte's postconviction motion for resentencing. Tofte argued that the circuit court had erroneously exercised its sentencing discretion by failing to consider the need to protect the public as part of its sentencing determination. See *Gallion*, 270 Wis. 2d 535, ¶¶39-46. The circuit court held a postconviction hearing and explained that, after reviewing the sentencing transcript, the court determined that the sentencing court had considered protection of the public by expressly considering the need for specific deterrence. The no-merit report also

³ This court issued an order noting that Tofte agreed to restitution in the amount of \$376,874.75 and that the circuit court entered an amended judgment of conviction reflecting restitution in that amount. Our order also noted, however, that the court then entered an order for restitution in the increased amount of \$387,122.95. We directed counsel to address whether there would be arguable merit to further proceedings based on the increased restitution amount. Counsel has filed a supplemental no-merit report explaining that, after the record was filed in this court, the circuit court issued another restitution order for the original amount of \$376,874.75. Based on the information provided by counsel, we agree with counsel's assessment that further proceedings on this issue would lack arguable merit.

notes that the sentencing court considered the effects of the crimes on the community. We agree that a challenge to the circuit court order denying resentencing would lack arguable merit.

Tofte has filed a no-merit response arguing that he would be able to pay his restitution more quickly if he were able to work outside of the prison. However, the circuit court considered the need for Tofte to pay restitution, along with other sentencing considerations, and determined that seven-and-a-half years of initial confinement was the necessary minimum amount.

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 and postconviction order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Susan E. Alesia is relieved of any further representation of Troy Matthew Tofte 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