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DISTRICT IV

January 21, 2021

To:

Hon. Chris Taylor
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You are hereby notified that the Court has entered the following opinion and order:

2019AP653-CRNM State of Wisconsin v. Xavier V. Fleming (L.C. # 2017CF1680)

Before Fitzpatrick, P.J., 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 Kelsey Loshaw, appointed counsel for Xavier Fleming, 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). Tristan Breedlove later replaced Loshaw as counsel. Counsel provided Fleming with a

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

copy of the report, and both counsel and this court advised him of his right to file a response. Fleming has not responded. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

Pursuant to a plea agreement, Fleming pled guilty to one count of felony murder. The circuit court imposed a sentence of fifteen years of initial confinement and ten years of extended supervision.

After reviewing the record, we noted a possible defect in the plea colloquy related to Fleming's understanding of the nature of the charge, and we ordered Fleming's attorney to review that issue further. In response, counsel filed a supplemental no-merit report stating that she did not believe that she could properly allege that Fleming did not understand the elements of the offense, as required by case law. We provided a period of time for Fleming to respond to the supplemental no-merit report, but he has not responded. Therefore, we accept counsel's conclusion that there is no basis for plea withdrawal on this issue.

As to other aspects of whether Fleming's 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 rights Fleming 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 addresses whether the sentence is within the legal maximum and 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. The sentence is within the legal maximum as provided in WIS. STAT. § 940.03. In exercising its discretion 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.

Our 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 Breedlove is relieved of further representation of Fleming 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