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DISTRICT IV

February 11, 2021

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

2020AP68-CRNM State of Wisconsin v. Stephon K. Hiler (L.C. # 2016CF1528)

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).

Attorneys Megan Sanders-Drazen and Andrew Hinkel, appointed counsel for Stephon Hiler, have 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 would be arguable merit to a challenge to Hiler’s plea or sentencing, or the circuit court decision on Hiler’s postconviction motion. Hiler was sent 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.

Hiler was charged with second-degree sexual assault. Pursuant to a plea agreement, Hiler pled guilty and the State agreed to limit its sentencing recommendation to twenty years of initial confinement. The court sentenced Hiler to twenty years of initial confinement and five years of extended supervision. Hiler filed a postconviction motion seeking sentence modification based on his post-sentencing testimony at his co-defendant’s trial. Hiler argued that his post-sentencing cooperation with law enforcement warranted a five-year reduction in his term of initial confinement. The circuit court modified Hiler’s sentence by reducing his term of initial confinement by three years.

The no-merit report addresses whether there would be arguable merit to a challenge to Hiler’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

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

circuit court conducted a plea colloquy that, together with the plea questionnaire Hiler signed, satisfied the court's mandatory duties to personally address Hiler and determine information such as Hiler'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. *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 Hiler'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.

The no-merit report also addresses whether there would be arguable merit to a challenge to Hiler's sentence. 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 severity of the offense, Hiler'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. An argument that the circuit court erroneously exercised its sentencing discretion would lack arguable merit.

The no-merit report also addresses whether there would be arguable merit to a challenge to the circuit court's decision on Hiler's postconviction motion. We agree with counsel's assessment that a challenge to the circuit court's order would lack arguable merit. Hiler argued that his post-sentencing cooperation with law enforcement warranted a five-year reduction in his term of initial confinement. The circuit court determined that Hiler had presented a new factor,

and that a three-year reduction in his term of initial confinement was warranted based on the facts of this case. We agree with counsel that a challenge to the circuit court's exercise of discretion would be wholly frivolous. *See State v. Doe*, 2005 WI App 68, ¶¶5-6, 280 Wis. 2d 731, 697 N.W.2d 101 (when new factor warranting sentence modification exists, circuit court has discretion to modify sentence).

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

IT IS FURTHER ORDERED that Attorneys Megan Sanders-Drazen and Andrew Hinkel are relieved of any further representation of Stephon Hiler 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