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DISTRICT IV

March 11, 2021

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

2020AP1080-CRNM State of Wisconsin v. Lenccardo Thompson (L.C. # 2017CF653)

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).

Lenccardo Thompson appeals a judgment convicting him of one count of burglary of a building or dwelling with intent to commit a felony, contrary to WIS. STAT. § 943.10(1m)(a) (2019-

20).¹ Attorney Nicholas Passe has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32;² *Anders v. California*, 386 U.S. 738, 744 (1967). Thompson was sent a copy of the no-merit report and has not filed a response. Upon reviewing the entire record and the no-merit report, we conclude that there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment of conviction and grant counsel's motion to withdraw.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986); *State v. Krieger*, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Thompson was charged with one count of second-degree sexual assault and one count of burglary of a building or dwelling with intent to commit a felony, both as repeaters. *See* WIS. STAT. §§ 940.225(2)(d); 943.10(1m)(a), 939.62(1)(c). Thompson entered his plea pursuant to a negotiated plea agreement that was presented in open court. In exchange for Thompson pleading

¹ All further references in this order to the Wisconsin Statutes are to the 2019-20 version, unless otherwise noted.

² Attorney Passe later filed a separate motion to withdraw as counsel, asserting that his new employment with the La Crosse County District Attorney's Office creates a conflict of interest. However, because we affirm the judgment of the circuit court and relieve Passe of his representation of Lencardo Thompson in this matter pursuant to WIS. STAT. RULE 809.32(3), the motion is moot.

no contest to the burglary count, the State agreed to dismiss the repeater provision as well as the count of sexual assault. The State also agreed to recommend one year of probation at sentencing.

The circuit court conducted a standard plea colloquy, inquiring into Thompson's ability to understand the proceedings and the voluntariness of his plea decision, and further exploring his understanding of the nature of the charges, the penalty ranges and other direct consequences of the plea, and the constitutional rights being waived. *See* WIS. STAT. § 971.08; *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and *Bangert*, 131 Wis. 2d at 266-72. The court made sure that Thompson understood the court would not be bound by any sentencing recommendations. In addition, Thompson provided the court with a signed plea questionnaire. Thompson indicated to the court that he understood the information explained on that form, and is not now claiming otherwise. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

The parties stipulated that the complaint provided a sufficient factual basis for the pleas. Thompson indicated satisfaction with his attorney, and there is nothing in the record to suggest that counsel's performance was in any way deficient. Thompson has not alleged any other facts that would give rise to a manifest injustice. Therefore, his pleas were valid and operated to waive 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.

A challenge to Thompson's sentence also would lack arguable merit. Here, the court withheld sentence and placed Thompson on five years of probation, with twelve months in the county jail as a condition of probation, to be served on electronic monitoring. The sentence was well within the legal maximum. *See* WIS. STAT. § 943.10(1m) (classifying burglary with intent to

commit a felony as a Class F felony); WIS. STAT. § 973.01(2)(b)6m. and (d)4. (providing maximum terms of seven and a half years of initial confinement and five years of extended supervision for a Class F felony). The standards for the circuit court and this court on discretionary 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. In this case, the court considered appropriate factors, did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

In addition to imposing probation, the circuit court ordered Thompson to register as a sex offender for life. Any challenge to this aspect of the sentence would be without arguable merit on appeal. Where the circuit court is permitted, but not required, to order sex offender registration, we review that decision for an erroneous exercise of discretion. *State v. Jackson*, 2012 WI App 76, ¶7, 343 Wis. 2d 602, 819 N.W.2d 288. WISCONSIN STAT. § 973.048(1m)(a) permits the circuit court to order sex offender registration for a burglary conviction under WIS. STAT. § 943.10 if: (1) “the underlying conduct was sexually motivated”; and (2) if requiring registration “would be in the interest of public protection.” As to the first requirement that the conduct be sexually motivated, the record establishes that the crime to which Thompson pled was burglary of a building or dwelling with the intent to commit the felony of sexual assault. As to the second requirement, the circuit court found that the sex offender registration was necessary to keep Thompson accountable and to ensure that he did not continue to hurt others with his behaviors. We are satisfied that, when taken as a whole, the circuit court’s remarks at sentencing demonstrate that the court was within the proper exercise of its discretion when it ordered Thompson to comply with sex offender registration.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. See *State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

IT IS ORDERED that the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Nicholas Passe is relieved of any further representation of Lencardo Thompson in this matter pursuant to 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