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DISTRICT I

April 6, 2021

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

2020AP1428-CRNM State of Wisconsin v. Darrail Demond Smith
(L.C. # 2018CF3591)

Before Brash, P.J.. Dugan and White, 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).

Darrail Demond Smith appeals a judgment convicting him of first-degree reckless homicide. He also appeals an order denying his postconviction motion. Appointed appellate

counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967).² Smith was notified that a no-merit report was filed and was advised of his right to file a response, but he has not responded. After considering the report and conducting an independent review of the record, as required by *Anders*, we conclude that there are no issues of arguable merit that could be raised on appeal. Therefore, we summarily affirm. See WIS. STAT. RULE 809.21.

The no-merit report first addresses whether there would be arguable merit to a claim that Smith should be allowed to withdraw his guilty pleas because he did not knowingly, intelligently, and voluntarily enter the same. The circuit court conducted a colloquy with Smith that complied with WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). Prior to the plea hearing, Smith discussed information pertinent to entering his pleas with trial counsel, and he reviewed a plea questionnaire and waiver of rights form with trial counsel and signed it. See *State v. Moerderdorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (stating that the circuit court may rely on a plea questionnaire and waiver of rights form in assessing the defendant's knowledge about the rights he or she is waiving). Smith acknowledged that there was a factual basis to convict him of the crime; he sold drugs to a person who died from an overdose. Therefore, there would be no arguable merit to an appellate challenge to the pleas.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court erroneously exercised its sentencing discretion when it sentenced Smith to

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

² Attorney Kaitlin Lamb filed the no-merit report. She has since withdrawn from representing Smith. He is now represented by Attorney Lauren J. Breckenfelder.

fourteen years of initial confinement and eight years of extended supervision. The record establishes that the circuit court considered the general objectives of sentencing and applied the sentencing factors to the facts of this case, reaching a reasoned and reasonable result. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (stating that the circuit court must identify the factors it considered and explain how those factors fit the sentencing objectives and influenced its sentencing decision). Upon review, we conclude that there would be no arguable merit to a challenge to the sentence.

The no-merit report next addresses whether there are any arguable issues that could be raised regarding the circuit court’s decision to deny Smith’s postconviction motion. Smith argued in his postconviction motion that his sentence should be commuted or stayed in light of the emergency circumstances brought on by Covid-19 and Smith’s substantial medical issues. The circuit court ruled that sentence modification was not warranted based on the facts and circumstances of this case. The circuit court noted that Smith committed a homicide but received only a fourteen-year sentence. The circuit court also recognized Smith’s unique risk because of his health conditions, but decided that releasing Smith “within one year of sentencing[] would unduly depreciate the seriousness of the offense and place the entire community at an unacceptable risk.” Based on the circuit court’s explanation of its decision to deny Smith’s postconviction motion, there would be no arguable merit to a claim that the circuit court misused its discretion in denying Smith’s motion to modify his sentence.

Our review of the record discloses no other potential issues for appeal. Accordingly, we accept the no-merit report, affirm the conviction and order denying postconviction relief, and discharge appellate counsel of the obligation to further represent Smith.

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Lauren J. Breckenfelder is relieved from further representing Darrail Demond Smith. *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