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April 20, 2021

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

2019AP907-CRNM State of Wisconsin v. Timothy Lovell Litt, Sr.
(L.C. # 2018CF1528)

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).

Timothy Lovell Litt, Sr., appeals from a judgment convicting him of battery by a prisoner. *See* WIS. STAT. § 940.20(1) (2019-20).¹ His appellate counsel, Jay R. Pucek, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738

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

(1967). Litt received a copy of the report, was advised of his right to file a response, and did not do so. We have independently reviewed the record and the no-merit report as mandated by *Anders*. We conclude that there is no issue of arguable merit that could be pursued on appeal. We, therefore, summarily affirm.

The criminal complaint alleged that while incarcerated at the Milwaukee County Jail, Litt became upset over the appearance of his lunch tray and proceeded to tackle and bite another inmate. Litt subsequently entered into a plea agreement with the State. Pursuant to the agreement, Litt agreed to plead guilty to the charge, and the State agreed to recommend an unspecified amount of incarceration.

The circuit court conducted a plea colloquy, accepted Litt's guilty plea, and found him guilty. The circuit court then stayed a sentence of two years of initial confinement and two years of extended supervision and ordered Litt to serve three years of probation with one year at the House of Correction as a condition of probation.

The no-merit report addresses the potential issues of whether Litt's plea was valid and whether the circuit court properly exercised its discretion during sentencing. The plea colloquy, when augmented by the plea questionnaire and waiver of rights form, the addendum, and the applicable jury instruction (which was initialed by Litt and attached to the plea questionnaire form), demonstrates Litt's understanding of the information he was entitled to and that his plea was knowingly, voluntarily, and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *see also State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Additionally, the record reveals that the circuit court considered

and applied the relevant sentencing factors. This court is satisfied that the no-merit report properly concludes the issues it raises are without merit and will not discuss them further.

Our independent review of the record, however, prompts us to address one other matter that the no-merit report does not discuss. Although the complaint properly identified the felony charge and the penalties that Litt faced, the court commissioner did not personally inform him of those penalties at the initial appearance. *See* WIS. STAT. § 970.02(1)(a); *see also State v. Thompson*, 2012 WI 90, ¶62, 342 Wis. 2d 674, 818 N.W.2d 904 (setting forth mandatory duties under § 970.02(1)(a), including: “In the case of a felony, the judge *shall* personally inform the defendant of the penalties for the felony or felonies with which the defendant is charged.”) (emphasis in *Thompson*). Instead, the commissioner asked defense counsel if he “[w]ent over [Litt’s] rights and penalties?” Defense counsel responded affirmatively, and there is no indication in the record that Litt could make the requisite showing of prejudice. *See id.*, ¶11 (“The prejudice determination [in this scenario] must satisfy the traditional standard for overcoming harmless error, that is, there must be a reasonable probability that the error contributed to the outcome of the action or the proceeding at issue.”). In any event, entry of a valid guilty plea constitutes a waiver of nonjurisdictional defects and defenses. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886. Consequently, there would be no arguable merit to a challenge on this basis.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Litt further in this appeal.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Jay R. Pucek is relieved of further representation of Litt 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