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DISTRICT IV

June 24, 2021

To:

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

2020AP94-CRNM State of Wisconsin v. Shayne A. Swadley (L.C. # 2016CF58)

Before Fitzpatrick, P.J., Blanchard, 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 Catherine Malchow, appointed counsel for Shayne Swadley, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Swadley with a copy of the report, and both counsel and this

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

court advised him of his right to file a response.² Swadley 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 that there is no arguable merit to any issue that could be raised on appeal.

Swadley pled guilty to one count of attempted first-degree intentional homicide. The court imposed a sentence of thirty years of initial confinement and ten years of extended supervision.

Swadley filed a postconviction motion to withdraw his plea due to ineffective assistance of counsel on the ground that his trial counsel incorrectly informed him that he would be eligible to petition for sentence adjustment. The circuit court held an evidentiary hearing and denied the motion based on a finding that trial counsel's testimony was more credible than Swadley's as to whether counsel provided the correct information.

The no-merit report concludes that it would be frivolous to appeal as to this issue because there is no basis to argue that the credibility finding was clearly erroneous. We agree.

The no-merit report also addresses whether Swadley's plea was otherwise 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 nature of the charge, the rights Swadley was waiving, and other matters. There is no arguable merit to this issue.

² Attorney Jeremy Newman was later appointed as successor counsel and currently represents the appellant in this matter.

The no-merit report addresses whether the sentence is within the legal maximum, and correctly explains that it is. As to whether the sentencing court erroneously exercised its 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. 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.

Our review of the record discloses no other potential issues for appeal.

Therefore,

IT IS ORDERED that the judgment of conviction and order denying postconviction relief are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Newman is relieved of further representation of Swadley 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