



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

September 1, 2021

To:

Hon. John A. Jorgensen
Circuit Court Judge
Electronic Notice

Christian A. Gossett
District Attorney
Electronic Notice

Melissa M. Pingel
Clerk of Circuit Court
Winnebago County
Electronic Notice

Winn S. Collins
Electronic Notice

Daniel R. Goggin, II
Electronic Notice

Darrel W. Jack, #154639
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2020AP1390-CRNM State of Wisconsin v. Darrel W. Jack (L.C. #2018CF344)

Before Gundrum, P.J., Neubauer and Grogan, 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 Daniel R. Goggin, II, appointed counsel for Darrel W. Jack, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32¹ 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 Jack's plea or sentencing. At this court's direction, counsel filed supplemental no-merit reports addressing sentence credit. Jack was sent a copy of the report and

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

supplemental reports but has not filed a response. Upon independently reviewing the entire record, as well as the no-merit report and supplemental no-merit reports, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Jack was charged with repeated sexual assault of a child and delivery of cocaine as a second or subsequent offense. Pursuant to a plea agreement, Jack pled no contest to repeated sexual assault of a child; the delivery charge and the charges from another case were dismissed and read in for sentencing purposes; and the State agreed not to recommend any specific sentence, with Jack free to argue. The circuit court sentenced Jack to six years of initial confinement and nine years of extended supervision.

The no-merit report addresses whether there would be arguable merit to a challenge to Jack'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 circuit court conducted a plea colloquy that, together with the plea questionnaire that Jack signed, satisfied the court's mandatory duties to personally address Jack and determine information such as Jack'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 Jack'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 Jack's sentence. We agree with counsel that this issue lacks arguable merit. 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, Jack'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. The sentence was within the maximum Jack faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See State v. Stenzel*, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances" (citation omitted)). We discern no other basis to challenge the sentence imposed by the circuit court.²

² By prior orders, this court directed no-merit counsel to address whether there would be arguable merit to further proceedings based on a discrepancy between the circuit court's oral pronouncement of sentence credit and the sentence credit reflected on the judgment of conviction. Counsel has filed supplemental no-merit reports explaining his conclusion that the sentence credit reflected on the judgment of conviction is the amount of sentence credit to which Jack is entitled, and that any challenge to the award of sentence credit would therefore be wholly frivolous. We agree with the analysis set forth in the supplemental no-merit reports and do not address this issue further.

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

IT IS FURTHER ORDERED that Attorney Daniel R. Goggin is relieved of any further representation of Darrel W. Jack 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