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DISTRICT IV

September 2, 2021

To:

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Circuit Court Judge
Electronic Notice

Carlo Esqueda
Clerk of Circuit Court
Dane County
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William L. Brown
Electronic Notice

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Patricia Sommer
Electronic Notice

Joshua B. McInnis 681612
Columbia Correctional Center
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Portage, WI 53901-0900

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

2020AP278-CRNM State of Wisconsin v. Joshua B. McInnis (L.C. # 2018CF513)

Before Blanchard, P.J., Kloppenburg, 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).

Joshua McInnis appeals a judgment of conviction for first-degree reckless homicide. Attorney Patricia Sommer, appointed counsel for McInnis, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). McInnis was sent a copy of the report and has not filed a response. Upon consideration of the report and an independent review of the record, we

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

conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, we affirm.

The State initially charged McInnis with one count of first-degree intentional homicide and one count of armed robbery as party to a crime, with use of a dangerous weapon. According to the complaint, during the course of a drug transaction, McInnis fired one shot at the victim as McInnis and another individual attempted to steal drugs. The victim was pronounced dead a short time later.

Pursuant to a plea agreement, McInnis pled guilty to a charge of first-degree reckless homicide, and the State moved to dismiss the intentional homicide charge, the armed robbery charge, and an additional charge in a separate case. The circuit court accepted McInnis's guilty plea to the first-degree reckless homicide charge and dismissed the remaining charges. The court sentenced McInnis to a 26-year term of imprisonment consisting of 20 years and 6 months of initial confinement and 5 years and 6 months of extended supervision.²

The no-merit report addresses whether McInnis's guilty plea was knowing, intelligent, and voluntary. We agree with counsel that there is no arguable merit to this issue. The circuit court's plea colloquy, including the court's references to the plea questionnaire and waiver of rights form, sufficiently complied with the requirements of WIS. STAT. § 971.08 and *State v.*

² The circuit court initially sentenced McInnis to 21 years of initial confinement and 5 years of extended supervision. However, later that same day, the prosecutor filed a letter alerting the court that the sentence structure was not a legal sentence because the term of extended supervision was not at least 25% of the term of initial confinement. *See* WIS. STAT. § 973.01(2)(d). The circuit court held a resentencing hearing ten days later. The court readopted its original sentencing reasoning, and it concluded that a sentence of 20 years and 6 months of initial confinement and 5 years and 6 months of extended supervision would satisfy § 973.01(2)(d) while comporting with the intentions and the sentencing factors that the court had considered at the original sentencing hearing.

Brown, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, relating to the nature of the charge, the maximum prison term, the rights McInnis was waiving, and other matters. We see no other ground on which McInnis might challenge his guilty plea.

The no-merit report next addresses whether the circuit court erroneously exercised its sentencing discretion. We agree with counsel that there is no arguable merit to this issue. The circuit court considered the required sentencing factors along with other relevant factors, and the court did not rely on any inappropriate factors in imposing the sentence ultimately imposed at the resentencing hearing. *See State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. The 26-year bifurcated sentence that McInnis received was well within the maximum. *See* WIS. STAT. §§ 940.02(1) and 939.50(3)(b) (2015-16) (providing for a 60-year maximum). We see no other arguable basis for McInnis to challenge his sentence.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Patricia Sommer is relieved of any further representation of Joshua McInnis 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