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DISTRICT I

January 19, 2022

To:

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Circuit Court Judge
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
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Demetrius Caston Townsend 339085
Redgranite Correctional Inst.
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You are hereby notified that the Court has entered the following opinion and order:

2019AP1195-CRNM State of Wisconsin v. Demetrius Caston Townsend
(L.C. # 2017CF2352)

Before Donald, 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).

Demetrius Caston Townsend appeals a judgment convicting him of one count of first-degree reckless homicide, as a party to a crime. Attorney Carl W. Chesshir filed a no-merit report. *See* WIS. STAT. RULE 809.32 (2019-20);[1] ***Anders v. California***, 386 U.S. 738, 744 (1967). Townsend responded to the report. After considering the no-merit report and the response, and after conducting an independent review of the record as mandated by ***Anders***, we

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

conclude that there are no issues of arguable merit that Townsend could raise on appeal. Therefore, we affirm. *See* WIS. STAT. RULE 809.21.

The amended criminal complaint alleged that Townsend, as a party to a crime, caused the death of Lena Wallace by supplying her with illegal drugs, which Wallace took and then died as a result. Pursuant to a plea agreement, Townsend pled guilty to this charge, while four other charges for bail jumping and drug possession and delivery were dismissed and read-in for sentencing.

The no-merit report addresses whether Townsend's guilty plea was knowingly, intelligently, and voluntarily entered. In order to ensure that a defendant is knowingly, intelligently, and voluntarily waiving the right to trial by entering a plea, the circuit court must conduct a colloquy with the defendant to ascertain whether the defendant understands the elements of the crime to which he is pleading guilty, the constitutional rights he is waiving by entering the plea, and the maximum potential penalties that could be imposed. *See* WIS. STAT. § 971.08; ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. A plea questionnaire and waiver-of-rights form that the defendant has acknowledged reviewing may reduce "'the extent and degree of the colloquy otherwise required between the [circuit] court and the defendant….'" ***State v. Hoppe***, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794 (citation omitted). Based on our review of the circuit court's plea colloquy with Townsend and Townsend's review of the plea questionnaire and waiver-of-rights form, we conclude that there would be no arguable merit to an appellate challenge to Townsend's plea.

The no-merit report also addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced Townsend. The circuit court sentenced

Townsend to twelve years of initial confinement and eight years of extended supervision. The circuit court considered appropriate factors in deciding the length of sentence to impose and explained its decision in accordance with the framework set forth in ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, there would be no arguable merit to an appellate challenge to the sentence.

In his response, Townsend argues that he received ineffective assistance of trial counsel because his attorney, Gary Rosenthal, advised him to plead guilty without first obtaining and reviewing the entire record. At the ***Machner***[2] hearing on December 20, 2017, Attorney Rosenthal testified the court that he had received discovery materials from the State, but said that he did not see any police reports. The assistant district attorney then informed Attorney Rosenthal that the State had turned over all information in its file to the defense. The record, therefore, shows that Attorney Rosenthal was given discovery materials by the State. Regardless, an attorney is not required to review every document pertinent to a case before advising his or her client. There would be no arguable merit to this claim.

Townsend also argues in his response that a statement the victim's boyfriend, Cody Kemmerling, made to the police should have been allowed at trial as an "excited utterance." Kemmerling told the police that he was in a car with Wallace when she began to have trouble breathing after they took drugs. Kemmerling told the police that he began to slap Wallace and hit her in the chest because he had done the same thing on a prior day when she overdosed and it

[2] ***State v. Machner***, 92 Wis. 2d 797, 804, 285 N.W.2d 905.

worked. Kemmerling also told the police that he had obtained the heroin from a friend and had given it to Wallace.

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." WIS. STAT. § 908.01(3). Hearsay is not admissible at trial with certain exceptions. WIS. STAT. § 908.02. One such exception is an "excited utterance." WIS. STAT. § 908.03(2). An excited utterance is "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." ***Id.*** The hearsay rules and its exceptions have no bearing on this case because Townsend did not have a trial. Instead, he waived his right to trial by entering a guilty plea. There would be no arguable merit to an appellate claim premised on Kemmerling's statement to the police.

Townsend also argues in his response that Kemmerling had a motive to implicate him to the police as the person who sold the drugs to Wallace because Kemmerling was attempting to get his child removed from foster care. Kemmerling's purported motive for implicating Townsend is not grounds for appellate relief because Townsend entered a guilty plea to the charge against him. By entering a guilty plea, he waived all non-jurisdictional arguments to his conviction. *See* ***State v. Asmus***, 2010 WI App 48, ¶3, 324 Wis. 2d 427, 782 N.W.2d 435 (stating that a guilty plea waives all non-jurisdictional arguments and defenses).

We carefully considered all of the concerns that Townsend raised in this response. To the extent any issue Townsend raised was not explicitly discussed here, we have concluded that it presented no grounds for any appeal. Our independent review of the record also reveals no arguable basis for reversing the judgment of conviction. Therefore, we accept the no-merit

report, affirm the judgment of conviction, and relieve Attorney Chesshir of further representation of Townsend.

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

IT IS FURTHER ORDERED that Attorney Carl W. Chesshir is relieved of further representation of Townsend 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