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DISTRICT IV

February 3, 2022

To:

Hon. Elliott M. Levine
Circuit Court Judge
Electronic Notice

Pamela Radtke
Clerk of Circuit Court
La Crosse County Courthouse
Electronic Notice

Frederick A. Bechtold
Electronic Notice

Winn S. Collins
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Susan C. Donskey
Electronic Notice

George L. Goins 384922
Sauk County Jail
1300 Lange Court
Baraboo, WI 53913

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

2021AP150-CRNM State of Wisconsin v. George L. Goins (L.C. # 2019CF852)

Before Kloppenburg, Fitzpatrick, and Nashold, 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 Frederick Bechtold, appointed counsel for George Goins, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20)[1] 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 Goins's plea or sentencing. Goins has filed a no-merit response, Attorney Bechtold has filed a supplemental no-merit report, and Goins has filed an

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

additional no-merit response. Upon independently reviewing the entire record, as well as the no-merit report, response, supplemental report, and additional response, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

Goins was charged with burglary while armed and felony bail jumping. Pursuant to a plea agreement, Goins pled guilty to those charges, and charges in several other cases pending against Goins were dismissed outright or dismissed and read in for sentencing purposes. The circuit court sentenced Goins to the maximum sentence of ten years of initial confinement and five years of extended supervision on the burglary charge, and a concurrent sentence of two years of initial confinement and two years of extended supervision on the bail jumping charge.

The no-merit report addresses whether there would be arguable merit to a challenge to Goins'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 Goins signed, satisfied the court's mandatory duties to personally address Goins and determine information such as Goins's understanding of the nature of the charges 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 Goins'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 Goins's sentence. 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 offenses, Goins's rehabilitative needs, 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. An argument that the circuit court erroneously exercised its sentencing discretion would lack arguable merit. The sentence was the maximum allowed by law for the burglary while armed conviction and less than the maximum for the bail jumping conviction. 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'" (quoted source omitted)). Additionally, the court awarded Goins 454 days of sentence credit, on counsel's stipulation. We discern no basis to challenge Goins's sentence.

Goins has filed a no-merit response that appears to raise challenges to the charges that were dismissed or dismissed and read in for sentencing purposes. Counsel has filed a supplemental no-merit report concluding that there would be no arguable merit to any issue raised in the no-merit response. Goins has filed an additional no-merit response arguing that the presentence investigation report (PSI) improperly included facts related to charges that were

dismissed outright, which were based on an alleged sexual assault. He argues that including those facts in the PSI caused the circuit court to sentence him on inaccurate information.

We agree with counsel's assessment that further proceedings challenging the charges that were dismissed outright or dismissed and read in for sentencing purposes in this case would be wholly frivolous. As counsel notes, a circuit court may consider even uncharged and unproven offenses in sentencing a defendant. *See* ***Elias v. State***, 93 Wis. 2d 278, 284, 286 N.W.2d 559 (1980). Moreover, at sentencing, defense counsel clarified that the facts in the PSI related to the alleged sexual assault went to counts that had been dismissed outright, not dismissed and read in. Defense counsel also reiterated that Goins maintained his innocence as to the sexual assault allegation. The circuit court's sentencing comments did not indicate that the court relied on the sexual assault allegation in determining the sentence to impose. *See* ***State v. Tiepelman***, 2006 WI 66, 291 Wis. 2d 179, 717 N.W.2d 1 (defendant is entitled to resentencing if the defendant shows that information at the original sentencing was inaccurate, and that the sentencing court actually relied on the inaccurate information). We discern no arguable merit to any claim based on Goins's challenges to the charges that were dismissed as part of the plea agreement.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction or order. 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 Frederick Bechtold is relieved of any further representation of George Goins 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