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DISTRICT II

February 16, 2022

To:

Hon. Peter L. Grimm
Circuit Court Judge
Electronic Notice

Ramona Geib
Clerk of Circuit Court
Fond du Lac County
Electronic Notice

Winn S. Collins
Electronic Notice

Laura M. Force
Electronic Notice

Eric Toney
Electronic Notice

Deshaunte William McGrath
338 E. Oklahoma Ave., Apt. 1
Milwaukee, WI 53207

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

2021AP483-CRNM State of Wisconsin v. Deshaunte William McGrath (L.C. #2018CF560)

Before Neubauer, Grogan, and Kornblum, 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 Laura M. Force, appointed counsel for appellant, Deshaunte William McGrath, 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 the circuit court's decision denying McGrath's suppression motion or to McGrath's plea or sentence. McGrath was

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

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

McGrath was charged with possession with intent to deliver more than 2,500 grams but not more than 10,000 grams of Tetrahydrocannabinols (THC), as party to a crime, with use of a dangerous weapon, as a repeater, and as a second or subsequent offense. McGrath pursued a motion to suppress the evidence recovered during a search of his vehicle, but the circuit court denied his motion. Pursuant to a plea agreement, McGrath then pled no contest to the possession with intent to deliver charge with the second or subsequent offense penalty enhancer, and the State agreed to limit its sentencing recommendation to five years of initial confinement. The circuit court imposed four years of initial confinement and four years of extended supervision. Additionally, the circuit court granted McGrath's postconviction request for 108 days of sentence credit.

The no-merit report concludes there would be no arguable merit to the circuit court's decision denying McGrath's motion to suppress the evidence recovered from his vehicle. We agree with the analysis set forth in the no-merit report on this issue and we adopt it here. Accordingly, we do not address this issue further.

The no-merit report also concludes there would be no arguable merit to a challenge to McGrath's plea. A defendant's 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, which, together with the plea questionnaire McGrath signed, satisfied the circuit court's mandatory duties to personally address McGrath and determine information such as McGrath'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 McGrath's plea would lack arguable merit. A valid no contest 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.

Finally, the no-merit report concludes there would be no arguable merit to a challenge to McGrath's sentence. Our review of a sentence determination begins "with the presumption that the trial 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 circuit court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the severity of the offense, McGrath'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 within the maximum McGrath 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)). Additionally, the circuit court granted McGrath's request for 108 days of sentence credit. We discern no basis to challenge the circuit court's sentencing decision.

Upon our independent review of the record, we see 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 Laura M. Force is relieved of any further representation of Deshaunte William McGrath in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published

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Sheila T. Reiff
Clerk of Court of Appeals