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DISTRICT IV

March 10, 2022

To:

Hon. Ellen K. Berz
Circuit Court Judge
Electronic Notice

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Kathleen Henry
Electronic Notice

Paul W. Humphrey
Electronic Notice

Terrance M. Vance
1933 Northport Dr., Apt. 9
Madison, WI 53704

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

2020AP1899-CRNM State of Wisconsin v. Terrance M. Vance (L.C. # 2019CF768)

Before Kloppenburg, Fitzpatrick, 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).

Attorney Kathleen Henry, appointed counsel for Terrance Vance, 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). Vance 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.

Vance was charged with two counts of identity theft and one count of theft from an individual at risk. Pursuant to a plea agreement, Vance pled guilty to one of the two identity theft counts and to the theft from an individual at risk count. The remaining identity theft count was dismissed and read in. The parties jointly recommended that Vance receive eighteen months of probation with forty-five days of jail time as a condition of his probation. The circuit court adopted the parties' joint recommendation.

The no-merit report addresses whether Vance's guilty pleas were knowing, intelligent, and voluntary. We agree with counsel that there is no arguable merit to this issue. With one exception, 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. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The exception is that the court did not personally establish that it was not bound by the parties' plea agreement, including any sentencing recommendation that was part of the agreement. However, because the court accepted the agreement and adopted the parties' joint sentencing recommendation, there is no arguable merit to pursuing plea withdrawal based on this plea colloquy defect. See *State v. Johnson*, 2012 WI App 21, ¶¶12-13, 339 Wis. 2d 421, 811 N.W.2d 441 (explaining that the circuit court's failure to advise the defendant that the court was not bound by the plea agreement did not affect the validity of the defendant's plea when the defendant received the benefit of the agreement). We see no other ground on which Vance might challenge his pleas.

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. As already noted, the circuit court followed the parties' joint sentencing recommendation. Vance cannot now challenge the sentencing outcome that he joined in recommending. *See State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (“Because defendant affirmatively approved the sentence, he cannot attack it on appeal.”).

Finally, the no-merit report addresses whether the circuit court erred in denying Vance's motion for sentence modification based on a new factor. We are satisfied that the report properly analyzes this issue as having no arguable merit. Vance presented no evidence to show that there was a new factor.

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

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See WIS. STAT. RULE 809.21.*

IT IS FURTHER ORDERED that Attorney Kathleen Henry is relieved of any further representation of Terrance Vance 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