



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

March 10, 2022

To:

Hon. Duane M. Jorgenson
Circuit Court Judge
Electronic Notice

Patricia A. FitzGerald
Electronic Notice

Trisha Rowe
Clerk of Circuit Court
Lafayette County Courthouse
Electronic Notice

Jenna L. Gill
Electronic Notice

Winn S. Collins
Electronic Notice

Dalton Allen Hopper 688924
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

2021AP902-CRNM State of Wisconsin v. Dalton Allen Hopper (L.C. # 2019CF48)

Before Blanchard, P.J., Kloppenburg, 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 Patricia FitzGerald, appointed counsel for appellant Dalton Hopper, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Hopper was provided a copy of the report, and has filed a response. Upon our independent review of the record, as well as the no-merit report and response, we conclude that

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

there is no arguable merit to any issue that could be raised in further proceedings. We therefore summarily affirm the judgment of conviction.

Hopper was charged with neglecting a child, where the consequence is great bodily harm; physical abuse of a child, intentionally causing great bodily harm; physical abuse of a child, intentionally causing bodily harm; and neglecting a child, where the consequence is bodily harm; all as a party to a crime. Pursuant to a plea agreement, Hopper pled guilty to physical abuse of a child, intentionally causing great bodily harm, as a party to a crime, and an amended count of chronic neglect of a child, where the consequence is bodily harm, as a party to a crime, and the remaining counts were dismissed and read in for sentencing purposes. The circuit court sentenced Hopper to fifteen years of initial confinement and five years of extended supervision on the physical abuse of a child count, and withheld sentence and imposed five years of probation on the chronic neglect of a child count.

The no-merit report addresses whether there would be arguable merit to a challenge to Hopper'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 Hopper signed, satisfied the court's mandatory duties to personally address Hopper and determine information such as Hopper'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 Hopper'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 Hopper'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 at the resentencing hearing that it considered facts pertinent to the standard sentencing factors and objectives, including the severity of the offenses, Hopper'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. Given the facts of this case, there would be no arguable merit to a claim that the sentences were 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)). We discern no basis to challenge the circuit court's sentencing.

Hopper asserts the following in his response: (1) contrary to a statement by the State at a hearing, and consistent with statements made by defense counsel, Hopper's two supervised visits with the child victims after he was charged in this case had gone well; (2) contrary to a statement by the State at sentencing, Hopper missed only one permanency plan hearing for the children, not several; (3) the circuit court incorrectly stated that Hopper's mother spoke on his behalf at

sentencing, when it was actually Hopper's grandmother; (4) a statement in the presentence investigation report (PSI) referring to a text message from Hopper to the child victims' mother about the children "smelling like pot" was in reference to the mother's older children when Hopper and the mother picked those children up from their father; (5) contrary to a statement in the PSI, Hopper was never married to the mother of his first child; and (6) subsequent to the completion of the PSI, Hopper discovered that his half-sister is from Massachusetts. We discern no arguably meritorious arguments that could be raised based on any of those assertions.

Upon our independent review of the record, we have found 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 Patricia FitzGerald is relieved of any further representation of Dalton Hopper 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