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DISTRICT IV

April 7, 2022

To:

Hon. Michael A. Haakenson
Circuit Court Judge
Electronic Notice

Jacki Gackstatter
Clerk of Circuit Court
Rock County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

David R. Karpe
Electronic Notice

David J. O'Leary
Electronic Notice

Thomas J. McKee 471472
Columbia Correctional Center
P.O. Box 900
Portage, WI 53901-0900

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

2019AP896-CRNM State of Wisconsin v. Thomas J. McKee (L.C. # 2017CF843)

Before Blanchard, P.J., Kloppenburg, 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).

Thomas J. McKee¹ appeals a judgment entered upon his guilty pleas to two counts of armed robbery as a repeater, and an order denying his postconviction motion for plea withdrawal. McKee's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE

¹ We observe that the circuit court docket refers to the appellant as Thomas McKee, Jr. However, at McKee's plea hearing, he informed the circuit court that the "Jr." designation was incorrect. Similarly, counsel's notice of appeal omits the "Jr." designation. We have removed the "Jr." designation from the caption.

809.32 (2019-20),² and *Anders v. California*, 386 U.S. 738, 744 (1967). McKee received a copy of the report, was advised of his right to file a response, and did not to do so. Upon consideration of the no-merit report and our independent review of the record, we conclude that the judgment and order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

McKee was charged with three counts of armed robbery, all as a repeat offender. The charged offenses were committed on the same day, at three separate establishments. Pursuant to a plea agreement, McKee pled guilty to the first two counts with the repeater enhancers, and the third count was dismissed and read in. The State agreed to cap its sentencing recommendation at twenty years of initial confinement followed by fifteen years of extended supervision, to run consecutive to any other sentence he was then serving. At sentencing, the circuit court imposed the same sentence on each count: seventeen years of initial confinement followed by thirteen years of extended supervision, to run concurrent with each other but consecutive to the revocation sentence McKee was then serving.

Appointed counsel filed a postconviction motion seeking to withdraw McKee's guilty pleas on grounds that "trial counsel told the defendant that the defendant would receive no greater period of incarceration than ten years['] confinement." The motion further alleged that trial counsel provided ineffective assistance by neglecting to file a motion to dismiss the charges due to "a defective information." Following an evidentiary hearing, the circuit court denied the

² All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

postconviction motion in full, and appointed counsel filed a no-merit notice of appeal from the judgment of conviction and the order denying postconviction relief.

Appellate counsel's no-merit report addresses whether McKee's guilty pleas were knowing, intelligent, and voluntary; whether there exists an arguably meritorious challenge to the circuit court's order denying McKee's postconviction motion; and whether the circuit properly exercised its discretion at sentencing. To appellate counsel's discussion of the sentence imposed, we add that the State followed the plea agreement, and that, in fashioning its sentence, the circuit court considered the gravity of the offense, McKee's rehabilitative needs, and the need to protect the public. *See State v. Bolstad*, 2021 WI App 81, ¶14, 399 Wis. 2d 815, 967 N.W.2d 164. With that caveat, we are satisfied that the no-merit report properly analyzes each of these potential issues as having no arguable merit.

Our independent review of the record discloses no other potential issues for appeal. Accordingly, the court accepts the no-merit report, affirms the judgment of conviction and order denying postconviction relief, and discharges appellate counsel of the obligation to further represent McKee in this 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 David R. Karpe is relieved from further representing Thomas J. McKee in this appeal. *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