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DISTRICT II

May 4, 2022

To:

Hon. Dale L. English
Circuit Court Judge
Electronic Notice

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

Winn S. Collins
Electronic Notice

Jeffrey W. Jensen
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Eric Toney
Electronic Notice

Raymond Bernard Smith #508736
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2019AP2371-CRNM	State of Wisconsin v. Raymond Bernard Smith (L.C. #2017CF473)
2019AP2372-CRNM	State of Wisconsin v. Raymond Bernard Smith (L.C. #2017CF474)

Before Gundrum, P.J., Neubauer and Grogan, 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).

In these consolidated matters, Raymond Bernard Smith appeals from judgments of conviction entered upon his guilty pleas to two counts of burglary. Appointed appellate counsel 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). Smith received a copy of the report, was advised of his right to file a response, and elected not to do so. Upon consideration of the report and an independent

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

review of the records, we conclude that the judgments may be summarily affirmed because there are no arguably meritorious issues for appeal. *See* WIS. STAT. RULE 809.21.

The State filed two complaints, each charging Smith with one count of burglary as a repeater and one count of criminal damage to property as a repeater. The complaints arose from two burglaries of closed businesses occurring three days apart. In both, the culprit broke in by smashing a glass door and, once inside, stole money from the cash register. The crimes were captured on video surveillance, and Smith's ex-wife identified him as the burglar in both videos.

Pursuant to a negotiated settlement, Smith pled guilty to the two burglary counts *without* the repeater enhancer, and the remaining two charges were dismissed and read in. On both burglary counts, the State agreed to recommend three years of initial confinement followed by three years of extended supervision, to run consecutive to each other and to any other sentence.² Ultimately, the circuit court imposed the State's recommended sentence:

So, the sentence in each case is going to be three years of confinement and three years of extended supervision consecutive to each other and to any other sentence. Then I've got the community protected for 17 years from him doing this again.

These consolidated no-merit appeals follow.

Appellate counsel's no-merit report addresses whether Smith's guilty pleas were knowingly, intelligently, and voluntarily entered. The record shows that the circuit court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1); *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986);

² Smith's supervision in a separate case was revoked due to these offenses.

and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. See also *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Additionally, the circuit court properly relied upon Smith’s signed plea questionnaire. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). We agree with appellate counsel that the circuit court conducted a plea colloquy that, together with Smith’s signed plea questionnaire, satisfied the court’s mandatory duties such that a challenge to the entry of Smith’s guilty pleas would lack arguable merit.

Next, the no-merit report addresses whether the circuit court properly exercised its discretion at sentencing and whether there exist grounds for a sentence modification. The records reveal that the court’s sentencing decision had a “rational and explainable basis.” *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The court’s sentencing remarks show that it considered the seriousness of the offenses, deeming their gravity to be “medium to high”; the character of the offender, which it considered mitigated by Smith’s educational and employment history but aggravated by his criminal record and history on supervision; and the need to protect the public, which it considered “very high” given that Smith “keeps doing the same thing. He keeps victimizing the public.” See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances, it cannot reasonably be argued that Smith’s sentence, which is well below the maximum, is so excessive as to shock public sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with appellate counsel that a challenge to Smith’s sentence would lack arguable merit.

Our review of the records discloses no other potential issues for appeal. Accordingly, the court accepts the no-merit report, affirms the judgments of conviction, and discharges appellate counsel of the obligation to further represent Smith in these appeals. Therefore,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Jeffrey W. Jensen is relieved from further representing Raymond Bernard Smith in these appeals. *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