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DISTRICT II

June 8, 2022

To:

Hon. Todd K. Martens
Circuit Court Judge
Electronic Notice

Theresa Russell
Clerk of Circuit Court
Washington County Courthouse
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Mark Bensen
Electronic Notice

Daniel Goggin II
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Crandall D. Henderson, #474280
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2020AP384-CRNM State of Wisconsin v. Crandall D. Henderson (L.C. #2017CF66)

Before Gundrum, P.J., 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).

Crandall D. Henderson appeals a judgment of conviction entered upon his guilty plea to one count of identity theft. His appointed appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Henderson received a copy of the report, was advised of his right to file a response, and has not done so. Upon consideration of the no-merit 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 the judgment may be summarily affirmed because there are no arguably meritorious issues for appeal. *See* WIS. STAT. RULE 809.21.

Henderson was charged with four counts of identity theft for financial gain, a Class H felony, contrary to WIS. STAT. § 943.201(2)(a). Pursuant to a plea agreement, Henderson pled guilty to count one, and counts two through four were dismissed but read in. The State agreed to recommend one year of initial confinement followed by two years of extended supervision with various conditions. The circuit court imposed a four-year bifurcated sentence with one year of initial confinement followed by three years of extended supervision, to run consecutive to any previously imposed sentence. This no-merit appeal follows.

Appellate counsel's no-merit report first addresses whether Henderson's guilty plea was knowingly, intelligently, and voluntarily entered. The circuit court's plea-taking duties are set forth in WIS. STAT. § 971.08(1), and summarized in *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. We agree with the no-merit report's analysis and ultimate conclusion that no issue of arguable merit arises from the plea-taking procedures, but observe that one part of the plea-taking colloquy warrants further discussion. Specifically, the circuit court did not provide the deportation warning required by § 971.08(1)(c), and the no-merit report does not address this potential issue. However, we conclude that in this case, the lack of an on-the-record deportation warning does not give rise to an arguably meritorious plea withdrawal claim.

First and foremost, there is no suggestion in the record that Henderson is not a United States citizen or that his guilty plea is likely to result in his deportation. *See* WIS. STAT. § 971.08(2) (if the plea-taking court fails to provide the deportation warning “*and* a defendant

later shows that the plea is likely to result in the defendant’s deportation,” or other immigration consequences, “the court on the defendant’s motion shall vacate” the judgment and permit plea withdrawal) (emphasis added). Indeed, the record reflects that Henderson is “African American” and thus, a citizen of the United States.

Additionally, Henderson’s signed plea questionnaire/waiver of rights form contains the deportation warning. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (a completed plea questionnaire and waiver of rights form is competent evidence of a knowing, intelligent, and voluntary plea). The plea-taking court ascertained that Henderson understood and signed the plea paperwork and had no questions about its contents. Given these circumstances, a challenge to the plea-taking procedures in this case would be wholly frivolous.

Next, appellate counsel’s no-merit report addresses whether the circuit court properly exercised its sentencing discretion. The record reveals that the court’s sentencing decision had a “rational and explainable basis.” *See State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The court considered appropriate factors, did not consider improper factors, and reached a rational result. Further, under the circumstances of this case, it cannot reasonably be argued that Henderson’s sentence 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 Henderson’s sentence would lack arguable merit.

Our independent review of the record reveals no other potential issues of arguable merit. Therefore,

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

IT IS FURTHER ORDERED that Attorney Daniel R. Goggin II, is relieved from further representing Crandall D. Henderson 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