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DISTRICT II

July 20, 2022

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Kenosha County Courthouse
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Anthony Kimmons, #672781
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:

2019AP626-CRNM	State of Wisconsin v. Anthony Kimmons (L.C. #2017CF1223)
2019AP627-CRNM	State of Wisconsin v. Anthony Kimmons (L.C. #2017CF1246)

Before Gundrum, P.J., Neubauer 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).

In these consolidated matters, Anthony Kimmons appeals judgments of conviction entered upon his guilty pleas to one count of burglary and two counts of armed robbery by threat of force. 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). Kimmons received a copy of the report and filed a response. Counsel then filed a supplemental no-merit report

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

addressing Kimmons' response. Upon consideration of the original and supplemental no-merit reports, Kimmons' response, and an independent 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.

Kimmons was charged with burglary, criminal damage to property, and misdemeanor theft, in connection with circuit court case No. 2017CF1223, for offenses occurring in January 2017. He was charged with two counts of armed burglary, two counts of armed robbery by threat of force, two counts of kidnapping, and two counts of false imprisonment, in connection with circuit court case No. 2017CF1246, for two separate incidents involving the same elderly victim committed in July and August 2017. Pursuant to a negotiated settlement, Kimmons pled guilty to burglary (count one in 2017CF1233) and to two counts of armed robbery by threat of force (counts two and six in 2017CF1246). The remaining counts would be dismissed and read in, and there was no agreement as to sentencing. The circuit court imposed the following: On both armed robbery counts, ten years of initial confinement followed by seven years of extended supervision, to run consecutive to each other; on the burglary, seven and one-half years of probation, to run consecutive to the armed robbery sentences. Kimmons was awarded 305 days of sentence credit and was found eligible for the Challenge Incarceration Program and the Substance Abuse Program. These consolidated no-merit appeals follow.

Appointed counsel's no-merit report first addresses whether Kimmons' guilty pleas were knowingly, voluntarily, and intelligently entered. With two exceptions discussed below, the plea-taking court fulfilled the duties set forth in *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. *See also* WIS. STAT. § 971.08(1). In addition to the substantive colloquy, the circuit court properly relied on Kimmons' signed plea questionnaire and its attachments. *See*

State v. Moerderdorfer, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Though the court did not provide the statutory deportation warnings, *see* § 971.08(1)(c), this does not give rise to an arguably meritorious issue because there is no suggestion that Kimmons’ pleas are likely to result in deportation. *See* § 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.) Here, the records, including the presentence investigation report (PSI), indicate that Kimmons was born in Chicago and is a U.S. citizen.

Similarly, no potential issue arises from the circuit court’s failure to specifically advise Kimmons that it was not bound by the terms of the parties’ plea agreement. *See State v. Hampton*, 2004 WI 107, ¶¶32, 38, 274 Wis. 2d 379, 683 N.W.2d 14 (when the prosecutor agrees to seek charge or sentencing concessions requiring circuit court approval, the court must personally advise the defendant that the prosecutor’s recommendations are not binding). Here, the plea agreement did not include sentencing concessions by the prosecutor, and the court accepted the agreement as to the dismissal of charges. *See State v. Johnson*, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 441 (no manifest injustice where the circuit court failed to advise the defendant under *Hampton* but followed the plea agreement as to dismissal of charges).

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals 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, Kimmons' character, and the need to protect 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 Kimmons' sentence, which is well below the statutory maximum, is so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

In his response to counsel's no-merit report, Kimmons asserts that the sentencing court "used erroneous information in judging my character." Counsel has filed a supplemental no-merit report squarely addressing why the claims in Kimmons' response have no arguable merit. We are satisfied that counsel's supplemental no-merit report properly analyzes these potential claims as without merit and will not discuss them further.

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

IT IS ORDERED that the judgments of conviction are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney George Tauscheck is relieved from further representing Anthony Kimmons. 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