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October 4, 2022

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

2019AP2297-CRNM State of Wisconsin v. Larry V. Henderson, Jr.
(L.C. # 2017CF4179)

Before Donald, P.J., Dugan and White, 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).

Larry V. Henderson, Jr., appeals the judgment convicting him of repeated sexual assault of the same child (at least three violations of first- or second-degree sexual assault). He also appeals the order denying his postconviction motion. His appellate counsel, Parker C. Mathers, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20) and *Anders v. California*, 386 U.S. 738 (1967).¹ Henderson filed a response, which he later amended, and

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

appellate counsel filed a supplemental no-merit report. Upon consideration of the filings and an independent review of the record as mandated by *Anders*, 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.

The State charged Henderson with repeated sexual assault of the same child (at least three violations of first-degree sexual assault), and two additional charges of repeated sexual assault of the same child (at least three violations of first- or second-degree sexual assault). According to the complaint, the then-fourteen-year-old victim told police that her mother's boyfriend had sexually assaulted her hundreds of times—almost daily—starting when she was eight years old. The victim told police that the last assault had occurred the day before. The complaint further stated that during an in-custody interview, Henderson admitted to having sex with the victim, telling the detective that as the victim became older it was like she was “willing.”

Pursuant to negotiations, Henderson pled guilty to one count of repeated sexual assault of the same child (at least three violations of first- or second-degree sexual assault) and the State moved the circuit court to dismiss and read-in the other charges. As a result of the agreement, Henderson would not face a twenty-five year mandatory minimum term of initial confinement on count one. The plea agreement left both sides free to argue as to the length of Henderson's sentence. The circuit court accepted Henderson's plea and sentenced him to seventeen years of initial confinement and nine years of extended supervision.

Postconviction, Henderson argued that he was entitled to plea withdrawal because his trial counsel coerced him into pleading guilty by promising him that he would not be sentenced to more than seven years in prison. The circuit court held a *Machner* hearing, during which both

Henderson and his trial counsel testified. *See State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979). After listening to the testimony, the circuit court denied Henderson's motion.

The no-merit report addresses the potential issues of whether Henderson's plea was valid and whether the circuit court properly exercised its discretion during sentencing. The plea colloquy, when augmented by the plea questionnaire and waiver of rights form, the addendum, and the applicable jury instruction, demonstrates Henderson's understanding of the information he was entitled to and that his pleas were knowingly, voluntarily, and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *see also State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Additionally, the record reveals that the circuit court considered and applied the relevant sentencing factors. *See State v. Gallion*, 2004 WI 42, ¶¶17, 40-43, 270 Wis. 2d 535, 678 N.W.2d 197. This court is satisfied that the no-merit report properly concludes the issues it raises are without merit.

In his responses to counsel's no-merit report, Henderson raises numerous challenges to his conviction. He continues to assert that he pled guilty because his trial counsel said he would only be sent to prison for five to seven years and because the State had DNA evidence. Henderson claims that he was never provided with the DNA results, and therefore, his plea was not knowingly, voluntarily, and intelligently entered. Henderson additionally argues his arrest was unlawful insofar as it was based on an invalid temporary felony warrant and lacked probable cause, resulting in a "sew up" confession. Lastly, he argues that the circuit court lost jurisdiction in this matter because it did not timely decide his postconviction motion.

In a supplemental no-merit report, counsel explains that Henderson's knowing and voluntary plea forfeited the right to raise other nonjurisdictional defects and defenses, including claimed violations of constitutional rights prior to the entry of the plea. *See State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886. The addendum to the plea questionnaire and waiver of rights form, which Henderson signed, made clear that by pleading guilty Henderson was giving up his right to challenge the constitutionality of any police action such as arresting him and taking a statement from him. We agree with counsel's conclusion that further pursuit of issues stemming from proceedings prior to Henderson's guilty plea would be frivolous within the meaning of *Anders*.

As for the timeliness of the circuit court's decision denying his postconviction motion, this court issued an order on December 5, 2019, retroactively extending the deadline for the circuit court to decide the motion. *See WIS. STAT. RULE 809.82(2)(a)*. There would be no arguable merit in further pursuit of this issue.

Our review of the record discloses no other potential issues for appeal. This court has reviewed and considered the various issues raised by Henderson. To the extent we did not specifically address all of them, this court has concluded that they lack sufficient merit or importance to warrant individual attention. Accordingly, this court accepts the no-merit report, affirms the judgment and order, and discharges appellate counsel of the obligation to represent Henderson further in this appeal.

Upon the foregoing, therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See WIS. STAT. RULE 809.21*.

IT IS FURTHER ORDERED that Attorney Parker C. Mathers is relieved of further representation of Larry V. Henderson, Jr., 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