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DISTRICT II

November 23, 2022

To:

Hon. Paul V. Malloy
Circuit Court Judge
Electronic Notice

Marylou Mueller
Clerk of Circuit Court
Ozaukee County Justice Center
Electronic Notice

Winn S. Collins
Electronic Notice

Adam Y. Gerol
Electronic Notice

Christopher D. Sobic
Electronic Notice

Ladarius C. Rash, #625408
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:

2020AP1027-CRNM State of Wisconsin v. Ladarius C. Rash (L.C. #2017CF175)

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

Ladarius C. Rash appeals from a judgment convicting him of second-degree recklessly endangering safety and operating a motor vehicle without the owner's consent and an order denying his postconviction motion for sentence modification. His 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). Rash received a copy of the report, was advised of his right to file a response,

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

and has elected not to do so. Upon consideration of the report and an 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.

Rash was charged with first-degree recklessly endangering safety, operating without consent, and attempting to elude a traffic officer. The circuit court ordered a competency evaluation, and the court-appointed examiner found Rash competent to proceed. Defense counsel stipulated to the finding of competency. Pursuant to a plea agreement, Rash pled no contest to an amended charge of second-degree recklessly endangering safety and operating without consent. The remaining charge was dismissed and read in for sentencing purposes. The court sentenced Rash to a total of four years of initial confinement and three years of extended supervision, consecutive to the sentence Rash was currently serving.

Rash moved for sentence modification based on the new factor that the State presented the court with inaccurate information as to Rash's prior juvenile delinquency record at sentencing. *See State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (new factor is a set of facts highly relevant to the imposition of sentence that was not known to the sentencing judge, either because it did not then exist or because it was unknowingly overlooked). Rash argued that the State asserted that Rash had thirteen prior juvenile adjudications when Rash only had six juvenile adjudications and that the State misinformed the court that Rash's juvenile adjudications included robbery by use of force, armed robbery, and burglary. At a motion hearing, the State conceded that it incorrectly recited Rash's juvenile offenses at the sentencing hearing. The circuit court determined, however, that it did not rely on the number of Rash's prior offenses in imposing sentence. The court also explained that it had reviewed the

presentence investigation report, which correctly listed Rash's prior juvenile offenses, twice prior to the sentencing hearing. The court therefore denied the motion for sentence modification.

The no-merit report addresses the potential issues of whether Rash's plea was knowingly, voluntarily, and intelligently entered, whether the sentence was the result of an erroneous exercise of discretion, and whether the circuit court properly denied the motion for sentence modification.² This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction and order, and discharges appellate counsel of the obligation to represent Rash further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Christopher D. Sobic is relieved from further representing Ladarius C. Rash in this appeal. *See* WIS. STAT. RULE 809.32(3).

² By prior order, this court directed no-merit counsel to address whether there would be arguable merit to a claim of ineffective assistance of counsel for failing to challenge the restitution ordered by the circuit court. Counsel has filed a supplemental no-merit report concluding that a claim of ineffective assistance of counsel on that basis would lack arguable merit. We agree with counsel's assessment in the supplemental no-merit report, and we do not address this issue further.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals