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DISTRICT I

December 6, 2022

To:

Hon. Michelle Ackerman Havas
Circuit Court Judge
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Winn S. Collins
Electronic Notice

Bradley J. Lochowicz
Electronic Notice

Corleon D. Thomas 667691
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

2021AP1153-CRNM State of Wisconsin v. Corleon D. Thomas (L.C. # 2017CF3687)

Before Brash, C.J., Donald, P.J., and Dugan, J.

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).

Attorney Bradley Lochowicz, as appointed counsel for Corleon Thomas, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Thomas with a copy of the report, and both counsel and this court advised him of his right to file a response. Thomas has not responded. We conclude that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21. After our

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

independent review of the record as mandated by *Anders*, we conclude that there is no arguable merit to any issue that could be raised on appeal.

In 2018, Thomas was convicted on seven felony counts. He filed a no-merit appeal, case No. 2018AP2159-CRNM. After our independent review of the record, we directed Thomas's attorney to review a potential issue related to sentencing. Counsel then concluded that the issue had arguable merit, and we dismissed that appeal to allow for a postconviction motion on that issue. Thomas filed that postconviction motion, and the circuit court denied it. Thomas has now filed a new no-merit appeal addressing the denial of his postconviction motion.

The issue Thomas raised in the postconviction motion was based on the remarks of the circuit court at sentencing. The court imposed a series of consecutive and concurrent sentences on individual counts. The court then made a statement summarizing its sentencing decision. However, the summary did not match the individual sentences previously imposed. The summary referred to a total sentence that was less than the cumulative total of the individual sentences by six months of initial confinement and six months of extended supervision. The judgment of conviction included all of the individual sentences as orally stated. Thomas asked the court to modify the judgment to conform to the lesser total sentence.

In denying Thomas's postconviction motion, the circuit court, in the person of the original sentencing judge, wrote that its sentencing intent was accurately stated in its pronouncement on the individual counts. The court wrote that its summary description of a lesser total sentence was based on an unfortunate mathematical error, and did not reflect its sentencing intent. Accordingly, the court concluded that the judgment of conviction correctly reflected its intent, and need not be amended.

When the court's unambiguous oral pronouncement of sentence conflicts with the judgment of conviction, the oral sentence controls. *State v. Perry*, 136 Wis. 2d 92, 112-15, 401 N.W.2d 748 (1987). Here, as the circuit court appeared to recognize, its oral statement was ambiguous. Its postconviction decision clarified that ambiguity, and is not inconsistent with the original sentencing record. A sentencing court is not permitted to alter its sentence based on reflection alone. *Scott v. State*, 64 Wis. 2d 54, 59, 218 N.W.2d 350 (1974). However, the record does not show any basis on which Thomas could argue that the court's clarification of his sentence was based on an improper alteration of the court's original intent. There is no arguable merit to this issue.

Our review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Lochowicz is relieved of further representation of Thomas 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