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DISTRICT IV

December 15, 2022

To:

Hon. Barbara W. McCrory
Circuit Court Judge
Electronic Notice

Jacki Gackstatter
Clerk of Circuit Court
Rock County Courthouse
Electronic Notice

Winn S. Collins
Electronic Notice

Leonard D. Kachinsky
Electronic Notice

Cheston M. Brown
1733 Avon Court
Beloit, WI 53511

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

2021AP1503-CRNM State of Wisconsin v. Cheston M. Brown (L.C. # 2019CF155)

Before Blanchard, P.J., Kloppenburg, and Graham, 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).

Attorney Len Kachinsky, appointed counsel for Cheston Brown, has filed a no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Brown was sent a copy of the report and has not filed a response. Upon consideration of the report and an independent review of the record, we conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, we affirm.

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

Brown pled guilty to one count of battery as an act of domestic abuse and one count of disorderly conduct as an act of domestic abuse, both as a repeater and as a domestic abuse repeater. The circuit court withheld sentence and imposed three years of probation with one year of conditional jail time.

The no-merit report addresses whether Brown's guilty pleas were knowing, intelligent, and voluntary. We agree with counsel that there is no arguable merit to this issue. With one exception, the circuit court's plea colloquy, including the court's references to the plea questionnaire and waiver of rights form, sufficiently complied with the requirements of WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The exception is that the court did not personally establish with Brown that the court was not bound by the parties' plea agreement, including any sentencing recommendation that was part of the agreement. However, the record shows that there was no agreement for a sentencing recommendation or other concessions by the State that the court could have rejected. Accordingly, there is no arguable basis to pursue plea withdrawal based on this plea colloquy defect. We see no other ground on which Brown might challenge his guilty pleas.

The no-merit report next addresses whether the circuit court erroneously exercised its sentencing discretion. We agree with counsel that there is no arguable merit to this issue. The circuit court considered the required sentencing factors along with other relevant factors. *See State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. The court did not consider any improper factors. We see no other arguable basis on which Brown might challenge sentencing. We also agree with counsel's conclusion that there is no non-frivolous basis to pursue relief relating to Brown's pro se postconviction motion for sentence modification.

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

Therefore,

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

IT IS FURTHER ORDERED that Attorney Len Kachinsky is relieved of any further representation of Cheston Brown 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