



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

February 1, 2023

To:

Hon. Paul Bugenhagen Jr.
Circuit Court Judge
Electronic Notice

Hon. Michael P. Maxwell
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Carl W. Chesshir
Electronic Notice

Winn S. Collins
Electronic Notice

Susan Lee Opper
Electronic Notice

Raymond B. Smith, #508736
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2020AP110-CRNM	State of Wisconsin v. Raymond B. Smith (L.C. #2017CF874)
2020AP111-CRNM	State of Wisconsin v. Raymond B. Smith (L.C. #2017CF1747)

Before Gundrum, P.J., Neubauer and Grogan, 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, Raymond B. Smith appeals from judgments of conviction entered upon his no-contest pleas to two counts of burglary, and from an order denying his motion for sentence modification. 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). Smith received a copy of the report, was advised of his right to file a response, and elected not to do so. Upon consideration of the report 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.

Across two complaints, the State charged Smith with eight counts of burglary for breaking into eight closed businesses.² Pursuant to a negotiated settlement, Smith pled no contest to two counts of burglary—count one in 2017CF874, and count four, without the repeater enhancer, in 2017CF1747—and the remaining six counts were dismissed and read in. In terms of sentencing, the State agreed to recommend “five to six years initial confinement on each count consecutive to one another and consecutive to any other sentence,” along with various conditions, including restitution. The State agreed to remain silent on the amount of extended supervision. The circuit court accepted Smith’s no-contest pleas, and imposed five years of initial confinement followed by five years of extended supervision on each count, to run consecutive to each other and to any previously imposed sentence.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted. The Honorable Michael P. Maxwell presided over Smith’s plea and sentencing hearing, and entered the judgments of conviction. The Honorable Paul Bugenhagen, Jr., presided over Smith’s postconviction hearing and entered the order denying sentence modification.

² Specifically, appeal No. 2020AP110-CRNM arises from Waukesha County Circuit Court case No. 2017CF874, in which Smith was charged with one count of burglary. Appeal No. 2020AP111-CRNM arises from Waukesha County case No. 2017CF1747, and after amendment, charges Smith with seven counts of burglary as a repeater.

Appointed postconviction counsel filed a motion for sentence modification, asserting as a new factor Smith's employment history at QuadGraphics. The circuit court heard and denied the motion. Smith appeals.

Appellate counsel's no-merit report addresses whether Smith's no-contest pleas were knowingly, intelligently, and voluntarily entered. The record shows that the circuit court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1); *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. See also *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Additionally, the circuit court properly relied upon Smith's signed plea questionnaire and its attachments. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). We agree with appellate counsel that the circuit court conducted a plea colloquy that, together with Smith's signed plea questionnaire and its attachments, satisfied the court's mandatory duties such that a challenge to the entry of Smith's no-contest pleas would lack arguable merit.³

Next, the no-merit report addresses the circuit court's exercise of its sentencing discretion. It is a well-settled principle of law that sentencing is committed to the circuit court's

³ Though not discussed in counsel's no-merit report, the sentencing hearing transcript suggests that, when stating the maximum penalty for count one, the circuit court said "you may be fined not more than \$25,000 or imprisoned not more than 1 year 6 months or both." In context, this discrepancy appears to be a typographic error either by the court reporter or by the reporter's recording machine. The correct penalty of twelve and one-half years is stated on all charging documents, including the one the circuit court read to Smith when accepting his pleas, and the court went on to state the correct maximum of twelve and one-half years before accepting Smith's plea to the other burglary offense. To the extent the circuit court might have misspoken, this is not a substantial defect in the plea colloquy, and does not constitute a manifest injustice warranting plea withdrawal. See *State v. Cross*, 2010 WI 70, 326 Wis. 2d 492, 786 N.W.2d 64.

discretion and our review is limited to determining whether the court erroneously exercised that discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the sentencing court considered appropriate factors, did not consider improper factors, and reached a reasonable result. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76; *State v. Grindemann*, 2002 WI App 106, ¶30, 255 Wis. 2d 632, 648 N.W.2d 507. Further, we cannot conclude that the aggregate sentence of twenty years, when measured against the maximum sentence of twenty-five years, is so excessive or unusual as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There is no arguably meritorious challenge to the sentence imposed in this case.

Finally, the no-merit report addresses whether the circuit court properly exercised its discretion in denying Smith's sentence modification motion. This court is satisfied that the no-merit report correctly analyzes this issue as without merit, and we will not discuss it further.

Our review of the records discloses no other potential issues for appeal. Accordingly, the court accepts the no-merit report, affirms the judgments of conviction and order denying postconviction relief, and discharges appellate counsel of the obligation to further represent Smith in these appeals.

Therefore,

IT IS ORDERED that the judgments and order of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Carl W. Chesshir is relieved from further representing Raymond B. Smith in these appeals. *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