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DISTRICT II

July 28, 2023

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Racine County Courthouse
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Patricia J. Hanson
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Annice Kelly
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Edward C. Lefler
420 Ridge Rd.
Walworth, WI 53184

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

2021AP746-CRNM State of Wisconsin v. Edward C. Lefler (L.C. #2020CF98)

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).

Edward C. Lefler appeals a judgment of conviction for operating a motor vehicle while intoxicated (OWI) as a fourth offense and with an alcohol concentration fine enhancer. Lefler's appointed appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Lefler filed a response to the no-merit report, and appellate counsel then filed a supplemental no-merit report. Upon

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

consideration of the no-merit report, Lefler's response, and the supplemental no-merit report and upon an independent review of the Record as mandated by ***Anders*** and RULE 809.32, we summarily affirm the judgment because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The State charged Lefler with OWI and operating a motor vehicle with a prohibited alcohol concentration (PAC), both as fourth offenses and both with alcohol concentration fine enhancers. According to the Amended Criminal Complaint, an officer made contact with a vehicle and identified Lefler as its driver. The officer detected a strong odor of intoxicants on Lefler's breath, noticed that Lefler's speech was slurred, and observed that Lefler's eyes were glassy. The officer administered three standardized field sobriety tests, and Lefler demonstrated indicators of impairment on each of the tests. The officer then arrested Lefler for OWI. Lefler consented to a blood draw after the officer read him the "Informing the Accused" form. Subsequent testing of Lefler's blood sample showed a blood alcohol concentration of 0.222.

During a status conference on May 19, 2020, Lefler's trial attorney informed the circuit court that he had received a plea offer from the State, which he had shared with Lefler, and that he had sent the State a counteroffer. Counsel also indicated, however, that he was waiting to receive a disk of a 911 call "as it relates to an issue with [the] stop." The prosecutor confirmed that she would provide that disk to Lefler's attorney once she received it.

Ultimately, the parties reached a plea agreement, and Lefler did not file a suppression motion challenging the legality of the stop. The plea agreement provided that Lefler would enter a guilty plea to the fourth-offense OWI charge with the alcohol concentration fine enhancer, and the PAC charge would be dismissed outright. The parties would jointly recommended a

sentence of two years' initial confinement and two years' extended supervision, concurrent to Lefler's revocation sentence in another case.

The circuit court conducted a plea colloquy with Lefler supplemented by a signed plea questionnaire and waiver of rights form. Following the colloquy, the court accepted Lefler's plea, finding that it was freely, knowingly, and voluntarily entered. The court also found that the Amended Criminal Complaint provided a factual basis for Lefler's plea. The court then proceeded directly to sentencing. After both sides made their sentencing arguments and Lefler exercised his right of allocution, the court followed the parties' joint recommendation and sentenced Lefler to two years' initial confinement and two years' extended supervision, concurrent to his revocation sentence.

The no-merit report addresses whether there would be arguable merit to a claim that Lefler's guilty plea was not knowingly, intelligently, and voluntarily entered due to a defect in the circuit court's plea colloquy. 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) and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Additionally, the court properly relied upon Lefler's signed plea questionnaire and waiver of rights form. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). On this Record, we agree with appellate counsel that any challenge to Lefler's plea based on a defect in the plea colloquy would lack arguable merit.

The no-merit report next addresses whether the circuit court properly exercised its discretion at sentencing. During its sentencing remarks, the court found that the parties' joint recommendation of two years' initial confinement and two years' extended supervision satisfied

the sentencing objectives of punishment, rehabilitation, protection of the community, and deterrence of others without minimizing the "underlying nature" of Lefler's offense. *See* ***State v. Gallion***, 2004 WI 42, ¶¶40-41, 270 Wis. 2d 535, 678 N.W.2d 197. Moreover, when a defendant affirmatively approves a sentence recommendation that the circuit court adopts, the defendant cannot attack the sentence on appeal. ***State v. Scherreiks***, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). Under these circumstances, any challenge to the court's exercise of sentencing discretion would lack arguable merit.

Lefler raises two issues in his response to the no-merit report. First, Lefler argues that the stop of his vehicle was illegal, and evidence of his intoxication should have therefore been suppressed. This claim lacks arguable merit because Lefler forfeited his right to challenge the legality of the stop when he entered a guilty plea to the OWI charge. *See* ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53 ("The general rule is that a guilty or no contest plea waives all nonjurisdictional defects and defenses, including alleged constitutional violations occurring prior to the plea.").

Second, Lefler asserts that his plea was not "knowingly and willingly" entered because his trial attorney "clearly stated" that Lefler would not be able to go to trial until mid-2022 due to the COVID-19 pandemic and that if Lefler instead accepted the State's plea offer, he could proceed with an appeal challenging the legality of the stop. Lefler contends that trial counsel "did state I would have [the conviction] reversed on appeal." He further asserts that he "fully believed" trial counsel's representation "that I would get the conviction overturned on appeal [based] solely upon the illegal stop."

We construe this argument as a claim that Lefler should be allowed to withdraw his plea because his trial attorney was constitutionally ineffective by informing Lefler that he could enter a guilty plea and then challenge the legality of the stop on appeal. A defendant is entitled to withdraw a guilty or no contest plea after sentencing if the defendant "show[s] by clear and convincing evidence that a refusal to allow withdrawal of the plea would result in manifest injustice[.]" ***State v. Dillard***, 2014 WI 123, ¶36, 358 Wis. 2d 543, 859 N.W.2d 44. "One way to demonstrate manifest injustice is to establish that the defendant received ineffective assistance of counsel." ***Id.***, ¶84.

To prevail on an ineffective-assistance-of-counsel claim, a defendant must show both that counsel performed deficiently and that counsel's deficient performance prejudiced the defense. ***State v. Breitzman***, 2017 WI 100, ¶37, 378 Wis. 2d 431, 904 N.W.2d 93. To establish prejudice in the plea-withdrawal context, a defendant must show a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. ***State v. Bentley***, 201 Wis. 2d 303, 312, 548 N.W.2d 50 (1996).

Here, even assuming that Lefler's trial attorney performed deficiently by incorrectly advising Lefler that he could challenge the legality of the stop on appeal after pleading guilty, a claim for plea withdrawal on that basis would lack arguable merit because there is no reasonable probability that, absent counsel's alleged error, Lefler would have rejected the extremely favorable plea agreement and insisted on going to trial.

The maximum sentence for fourth-offense OWI is six years' imprisonment bifurcated as three years' initial confinement and three years' extended supervision. WIS. STAT. §§ 346.65(2)(am)4., 939.50(3)(h), 973.01(2)(b)8. The circuit court could have imposed this

maximum sentence consecutive to Lefler's revocation sentence of eighteen months' initial confinement and eighteen months' extended supervision. Under the plea agreement, however, the State agreed to recommend that the court sentence Lefler to two years' initial confinement and two years' extended supervision, concurrent with his revocation sentence. Thus, pursuant to the joint recommendation, Lefler would serve only six additional months of initial confinement and six additional months of extended supervision beyond the time that he was already required to serve on his revocation sentence.

In the supplemental no-merit report, appellate counsel asserts that she spoke with Lefler's trial attorney, who informed her that Lefler "decided to plead and not pursue the stop issue" because Lefler "was getting revoked, and the offer from the state was two years initial confinement and two years of supervision, to run concurrent with his revocation sentence of 18 months incarceration and 18 months supervision[.]" Trial counsel also stated "that [Lefler] knew the system and decided to plead guilty even though the potential stop issue existed because in part [he was] also being revoked." In other words, Lefler—who had past experience in the criminal justice system—was aware of the possibility of filing a suppression motion but specifically chose not to do so in order to receive the substantial benefit of the State's favorable sentence recommendation under the plea agreement.

The Record also shows that, while exercising his right of allocution, Lefler expressly thanked both his trial attorney and the prosecutor for "com[ing] together and mak[ing] this possible." Then, after the circuit court followed the parties' joint sentence recommendation, Lefler commended the court for being a "really nice and decent Judge." These statements further undercut any argument that Lefler pled guilty because he believed that he could later challenge the legality of the stop on appeal rather than because he wanted the benefit of the favorable plea

agreement. On this Record, there is no reasonable probability that, absent trial counsel's alleged error, Lefler would have rejected the plea agreement and insisted on going to trial. Any claim for plea withdrawal on this basis would therefore lack arguable merit.

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

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Annice Kelly is relieved of further representation of Edward C. Lefler in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

Samuel A. Christensen
Clerk of Court of Appeals