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DISTRICT II

November 1, 2023

To:

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Circuit Court Judge
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Shaquille O. Stone, #548204
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You are hereby notified that the Court has entered the following opinion and order:

2021AP1785-CRNM State of Wisconsin v. Shaquille O. Stone (L.C. #2017CF952)

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).

Shaquille O. Stone appeals from a judgment of conviction and an order denying his postconviction motion. His 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). Stone was sent a copy of the report and advised of his right to file a response—he has not done so. Upon consideration

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

of the report and an independent review of the record, we conclude there are no issues with arguable merit for appeal. We summarily affirm. *See* WIS. STAT. RULE 809.21.

First, we see no arguable basis for plea withdrawal. In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant entering an unknowing plea or demonstrate some other manifest injustice such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. *State v. Bangert*, 131 Wis. 2d 246, 272-276, 389 N.W.2d 12 (1986); *State v. Krieger*, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Stone entered a plea of no contest to three counts of armed robbery and one count of operating a vehicle without the owner's consent. The State agreed to dismiss the repeater penalty enhancers on each charge as part of the plea agreement. The circuit court conducted a standard plea colloquy, inquiring into Stone's ability to understand the proceedings and the voluntariness of his plea decision, and further exploring his understanding of the nature of the charge, the penalty range and other direct consequences of the plea, and the constitutional rights being waived. *See State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; and *Bangert*, 131 Wis. 2d at 266-72. The court made sure Stone understood that it would not be bound by any sentencing recommendations. In addition, Stone provided the court with a signed plea questionnaire. Stone indicated to the court that he understood the information explained on that form, and he is not now claiming otherwise. *See State v. Moerderdorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

Stone's counsel stated on the record that there was a factual basis for the plea, and nothing in the record or the no-merit report leads us to conclude otherwise. Nothing in our independent review of the record would support a claim that trial counsel rendered ineffective assistance. Stone has not alleged any other facts that would give rise to a manifest injustice. Therefore, the plea was valid and operated to waive all nonjurisdictional defects and defenses, aside from any suppression ruling. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

There also is no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. In imposing sentence, the court considered the seriousness of the offenses, Stone's character, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶40-44, 270 Wis. 2d 535, 678 N.W.2d 197. Stone had the opportunity, through his counsel, to comment on the presentence investigation report. He also had the opportunity to address the court directly, and did so prior to the court's imposition of sentence. The court imposed concurrent sentences of fifteen years of initial confinement and fifteen years of extended supervision on each of the three armed robbery charges and eighteen months of initial confinement and two years of extended supervision on the vehicle charge. Stone faced a total possible sentence of seventy-six and one-half years of initial confinement and forty-seven years of extended supervision. *See* WIS. STAT. §§ 943.32(2) (classifying armed robbery as a Class C felony); 939.50(3)(c) (providing maximum terms for a Class C felony); 943.23(3)(a) (classifying operating a vehicle without the owner's consent as a Class I felony); 939.50(3)(i) (providing maximum terms for a Class I felony). Under the circumstances, it cannot reasonably be argued that Stone's sentence is so excessive as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Finally, there is no arguable merit to a claim that the circuit court erroneously exercised its discretion in denying Stone's postconviction motion.² At sentencing, the court determined that Stone was not eligible for the Challenge Incarceration Program (CIP) or the Substance Abuse Program (SAP). *See State v. Owens*, 2006 WI App 75, ¶¶6-9, 291 Wis. 2d 229, 713 N.W.2d 187. Stone filed a postconviction motion requesting that the court find him eligible to participate in the programs. The court denied the motion, finding that the sentencing court did not erroneously exercise its discretion in finding Stone ineligible for the programs. *See id.* Based on its review of the record, the postconviction court also made an independent determination that it would not be appropriate to make Stone eligible for CIP or SAP. There is no arguable merit to a challenge to this finding.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. *See State v. Allen*, 2010 WI 89, ¶¶81-82, 328 Wis. 2d 1, 786 N.W.2d 124. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32. Accordingly, this court accepts the no-merit report and discharges appellate counsel of the obligation to represent Stone further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

² The Honorable Ralph M. Ramirez presided over Stone's plea hearing and imposed sentence. The Honorable Jennifer R. Dorow presided over Stone's postconviction hearing.

IT IS FURTHER ORDERED that Attorney Christopher D. Sobic is relieved of further representation of Shaquille O. Stone 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