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DISTRICT IV

February 1, 2024

To:

Hon. Michael P. Screnock
Circuit Court Judge
Electronic Notice

Carrie Wastlick
Clerk of Circuit Court
Sauk County Courthouse
Electronic Notice

Roberta A. Heckes
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Devin J. Schroeder 617887
Fox Lake Correctional Inst.
P.O. Box 147
Fox Lake, WI 53933

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

2022AP834-CRNM	State of Wisconsin v. Devin J. Schroeder (L.C. # 2022CF116)
2022AP835-CRNM	State of Wisconsin v. Devin J. Schroeder (L.C. # 2022CF122)

Before Kloppenburg, P.J., Nashold, and Taylor, JJ.

Devin Schroeder appeals a judgment of conviction for arson and criminal damage to property, and a judgment of conviction for burglary. Attorney Roberta Heckes has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22).¹ The no-merit report addresses whether there would be arguable merit to a challenge to Schroeder's pleas or sentencing. Schroeder was advised of his right to respond to the no-merit report, but he has not filed a response. Having independently reviewed the entire record as mandated by *Anders v. California*, 386 U.S. 738, 744 (1967), we agree that there are no issues

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

of arguable merit. We summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21.

The State charged Schroeder in Sauk County case No. 2020CF116 with misdemeanor criminal damage to property, felony criminal damage to property, attempted arson, arson, misdemeanor theft, and two counts of burglary, all as a repeater. The State subsequently charged Schroeder in Sauk County case No. 2020CF122 with two counts of burglary and two counts of misdemeanor theft. Pursuant to a plea agreement, Schroeder pled no contest to one count of felony criminal damage to property and one count of arson, without the repeater enhancers, in case No. 2020CF116, and one count of burglary in case No. 2020CF122. The remaining counts were dismissed and read-in for sentencing purposes. The court imposed a total sentence of one year of jail time plus ten years of initial confinement and ten years of extended supervision. The court awarded Schroeder 368 days of sentence credit, on counsel's stipulation. Additionally, after a restitution hearing, the court ordered Schroeder to pay \$134,938.58 in restitution.

The no-merit report addresses whether there would be arguable merit to a challenge to the validity of Schroeder's pleas. We agree with counsel's assessment that a challenge to Schroeder's pleas would be wholly frivolous. A postsentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaires that Schroeder signed, satisfied the court's mandatory duties to personally address Schroeder and to determine information such as Schroeder's understanding of the nature of the charges and the range of punishments he faced, the constitutional rights he waived by entering

pleas, and the direct consequences of his pleas. *See State v. Hoppe*, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794.

Although the circuit court’s plea colloquy contains a few defects, none of the defects would support a nonfrivolous motion for plea withdrawal. The court did not specifically address whether any threats or promises were made to Schroeder prior to entering his pleas; however, Schroeder signed the plea questionnaires, which both include the statement, “I have not been threatened or forced to enter this plea. No promises have been made to me other than those contained in the plea agreement.” The court also failed to inform Schroeder of the potential immigration consequences of his pleas, as required by WIS. STAT. § 971.08(1)(c). However, it appears from the information in the presentence investigation report that Schroeder was born in Wisconsin, and there is nothing in the record to suggest that Schroeder will suffer adverse immigration consequences as a result of his pleas. *See State v. Negrete*, 2012 WI 92, ¶26, 343 Wis. 2d 1, 819 N.W.2d 749 (the circuit court’s failure to inform a defendant that the defendant could face possible deportation as a result of entering a plea is actionable only if there is a causal nexus between the entry of the plea and the federal government’s likely imposition of adverse immigration action).

Finally, while the plea questionnaires state that the circuit court was not bound by the plea agreement, the court did not personally inform Schroeder that it was not bound by the plea agreement, as required by *State v. Hampton*, 2002 WI App 293, ¶9, 259 Wis. 2d 455, 655 N.W.2d 131. However, any argument that Schroeder should be permitted to seek plea withdrawal under *Hampton* lacks arguable merit because the court accepted the State’s charging concessions under the agreement. *See State v. Johnson*, 2012 WI App 21, ¶12, 339 Wis. 2d 421,

811 N.W.2d 441 (no manifest injustice justifying plea withdrawal exists where the court failed to advise defendant but followed the plea agreement).

We conclude that there is no arguable merit to a claim that Schroeder’s pleas were anything other than knowing, intelligent, and voluntary. A valid guilty plea constitutes a waiver of all nonjurisdictional defects and defenses. *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

The no-merit report also addresses whether there would be arguable merit to a challenge to the circuit court’s exercise of its sentencing discretion. Our review of a sentence determination begins “with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of.” *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). The record establishes that Schroeder was afforded the opportunity to address the court prior to sentencing. The court explained that it considered facts pertinent to the standard sentencing factors and objectives, including the seriousness of the offenses, Schroeder’s rehabilitative needs, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶39-46 & n.11, 270 Wis. 2d 535, 678 N.W.2d 197. We discern no non-frivolous basis to challenge the court’s exercise of its sentencing discretion.

We also conclude that Schroeder could not pursue an arguably meritorious challenge to the restitution ordered in this case. Restitution is governed by WIS. STAT. § 973.20. “A request for restitution, including the calculation as to the appropriate amount of restitution, is addressed to the circuit court’s discretion” *State v. Gibson*, 2012 WI App 103, ¶8, 344 Wis. 2d 220, 822 N.W.2d 500. Our standard of review is highly deferential. *See State v. Fernandez*, 2009

WI 29, ¶8, 316 Wis. 2d 598, 764 N.W.2d 509. We search the record for reasons to sustain the circuit court’s exercise of discretion. *See State v. Hershberger*, 2014 WI App 86, ¶43, 356 Wis. 2d 220, 853 N.W.2d 586.

At the restitution hearing, Schroeder stipulated to the requested restitution amount of \$134,983.58, but disputed his ability to pay. The circuit court must consider the defendant’s ability to pay restitution, *see* WIS. STAT. § 973.20(13)(a), but the amount ordered need not be limited to the amount the defendant has the ability to pay during the term of the sentence, *see Fernandez*, 316 Wis. 2d 598, ¶¶5, 64. Here, the circuit court considered Schroeder’s age and employment history, and determined that he would likely have the ability to pay the requested restitution over the course of the remainder of his working years. We are satisfied that the court’s restitution award was consistent with the purpose of § 973.20, which “reflects a strong equitable public policy that victims should not have to bear the burden of losses if the defendant is capable of making restitution.” *See Gibson*, 344 Wis. 2d 220, ¶10 (quoted source omitted). In light of our deferential standard of review, further pursuit of this issue would lack arguable merit.

Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders*.

Therefore,

IT IS ORDERED that the judgments of conviction are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Roberta Heckes is relieved of any further representation of Devin Schroeder in this matter pursuant to 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