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DISTRICT II

October 9, 2024

To:

Hon. Dale L. English
Circuit Court Judge
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Michelle Weber
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

Eric Lentz, #270423
Prairie Du Chien Correctional Inst.
P.O. Box 9900
Prairie du Chien, WI 53821

Katie Babe
Electronic Notice

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

2023AP1097-CRNM State of Wisconsin v. Eric Lentz (L.C. #2019CF319)

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).

Eric Lentz appeals from a judgment convicting him of operating with a restricted controlled substance in his blood, as an eighth offense, contrary to WIS. STAT. § 346.63(1)(am) (2021-22).¹ His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Lentz filed a response. Upon consideration of the no-merit report and response, and after an independent review of the record, we conclude that

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

there are no issues with arguable merit for appeal. We summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

Lentz was charged with one count of operating while intoxicated and one count of operating with a restricted controlled substance in his blood, each as a seventh, eighth, or ninth offense. The charges stemmed from a traffic stop of a vehicle that Lentz was driving, after a law enforcement officer observed the vehicle fail to stop at a flashing red light. Lentz told the officer who pulled him over that he was driving without a license. The officer conducted field sobriety tests and observed indicators of impairment.

Pursuant to a negotiated plea agreement, Lentz pled guilty to one count of operating with a restricted controlled substance in his blood, as an eighth offense. The circuit court sentenced Lentz to four years of initial confinement and four years of extended supervision, consecutive to any other sentence. This no-merit appeal follows.

The no-merit report addresses potential issues of whether the plea was entered knowingly and voluntarily and whether the circuit court erred in its exercise of sentencing discretion. This court is satisfied that the no-merit report correctly analyzes the issues it raises as without arguable merit, and we will not discuss them further.

As noted, Lentz filed a response to counsel's no-merit report. In it, Lentz challenges the basis for the traffic stop and the way in which it was administered. These issues are without arguable merit. By entering his plea, Lentz forfeited the right to challenge the traffic stop. *See State v. Keltz*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886.

Lentz also asserts in the no-merit response that he desired a concurrent sentence but received a consecutive sentence. Lentz asserts that, if he had known that the court was going to sentence him the way it did, he would not have entered into a plea deal. Counsel addresses this issue in the no-merit report and ultimately concludes that Lentz has not shown an arguably meritorious basis for plea withdrawal. We agree with counsel's conclusion. After sentencing, a plea will not be disturbed unless the defendant shows "by clear and convincing evidence that failure to withdraw the guilty or no contest plea will result in a manifest injustice." *State v. Taylor*, 2013 WI 34, ¶48, 347 Wis. 2d 30, 829 N.W.2d 482. Lentz has not made such a showing. The record reflects that Lentz was informed during the plea colloquy that the court did not have to go along with any party's sentencing recommendation and could impose the maximum sentence. "Disappointment in the eventual punishment does not rise to the level of a manifest injustice." *Id.*, ¶48.

Lentz also argues that the sentencing court failed to consider positive mitigating factors. This argument is without merit. The record reflects that the court did consider mitigating factors, stating that Lentz is a good worker, that he is a good father when not in custody, that he has support from friends and family, and that he has obtained his GED. Lentz's assertion that the circuit court did not know that he had completed supervision is also contradicted by the record. The court acknowledged that Lentz had completed supervision, but stated that his performance on supervision was poor, with violations for drug and alcohol use and for lying to the agent.

Lentz also asserts in an unsupported, conclusory manner that the sentencing court did not understand the results of the competency evaluations it ordered. This court's review of the record reveals no basis for challenging the circuit court's finding that Lentz was competent to proceed. The court held a competency hearing at which the parties stipulated that Lentz was

competent. Lentz personally confirmed on the record that he felt he was capable of understanding the nature of the proceedings and the roles of the parties, and that he could assist his counsel in the defense. Lentz acknowledges in his no-merit response that the court found him competent, and he does not refute that finding now.

Finally, Lentz challenges the effectiveness of his trial counsel. At the plea hearing, Lentz indicated that he was satisfied with his attorney's representation of him and that there was nothing about the hearing that he did not understand. This court's review of the no-merit report, response, and the record reveals no arguably meritorious basis for a claim of ineffective assistance of counsel.

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

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 Katie Babe is relieved of further representation of Eric Lentz 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