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DISTRICT IV

January 24, 2013

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

2011AP2011-CRNM State of Wisconsin v. Adam Lee Gurney (L.C. #2006CF3010)

Before Lundsten, P.J., Higginbotham and Blanchard, JJ.

Attorney Elizabeth Ewald Herrick, appointed counsel for Adam Gurney, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2009-10)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Counsel provided Gurney with a copy of the report, and both counsel and this court advised him of his right to file a response. Gurney has not responded. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

Gurney pled guilty to one count of first-degree sexual assault of a child. The court imposed a sentence of ten years of initial confinement and ten years of extended supervision.

The no-merit report discusses whether the circuit court erred in denying Gurney's motion to suppress a statement he made to police. The discussion in the report is inadequate. The discussion states conflicting standards of review. Several times it states that the question is whether the court erroneously exercised its discretion, and another time it states the test is *de novo*, but the report never cites authority for either proposition. More importantly, the no-merit report contains no analysis of how the applicable law relates to the specific facts of this case.

Gurney argued that the statement was involuntary. When the issue is voluntariness, we give deference to the circuit court's findings about the historical facts, but the application of the constitutional principles to those facts is subject to independent appellate review. ***State v. Hoppe***, 2003 WI 43, ¶34, 261 Wis. 2d 294, 661 N.W.2d 407. Voluntariness is decided based on the totality of the circumstances, which involves a balancing of the personal characteristics of the defendant against the pressures imposed upon the defendant by law enforcement officers. ***Id***., ¶38. In applying that test, we may consider a variety of factors that we will not list in detail here. *See* ***id***., ¶¶39-40.

There appears to have been no dispute about the historical facts in the circuit court. A transcript and video recording of the interview leading up to Gurney's statement are in the record. The detective who led the interview testified that certain statements he made to Gurney

about physical evidence that police had were false. The circuit court's decision appeared to accept that as a fact.

Gurney's argument for involuntariness was based on the police lie, the suggestive and leading technique the detective used, and Gurney's personal characteristics. Lies told by police do not necessarily make a statement involuntary, but they are a factor to consider. ***State v. Triggs***, 2003 WI App 91, ¶17, 264 Wis. 2d 861, 663 N.W.2d 396. Gurney's argument about his personal characteristics is based mainly on his being in special education classes in school and his placement as a juvenile in mental or other institutions.

We conclude it would be frivolous to argue that the statement was involuntary. Regardless of his history as a juvenile, there was no evidence that Gurney suffered from any significant impairment as an adult. Gurney does not appear to have been an unwilling participant in his adoption of the ideas suggested to him by the detective. Indeed, he appears to have been very cooperative in that process. In addition, toward the end of the interview, the detective stated that he was trying to "jump start" Gurney's "memory," and that Gurney should tell him if the detective "put any thoughts in your head." Gurney replied: "No. You just help me replay things." Accordingly, we conclude it would be frivolous to argue that the statement was involuntary.

The no-merit report addresses whether Gurney's plea was entered knowingly, voluntarily, and intelligently. The plea colloquy sufficiently complied with the requirements of ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986), and WIS. STAT. § 971.08 relating to the nature of the charge, the rights Gurney was waiving, and other matters. The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report addresses whether the court erroneously exercised its sentencing discretion. The standards for the circuit court and this court on sentencing issues are well established and need not be repeated here. *See* ***State v. Gallion***, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the court considered appropriate factors such as the serious nature of the offense, Gurney's continued denial of the offense after pleading guilty, Gurney's record of prior convictions, the need for treatment, Gurney's tendency to blame others for his conduct, and the need to protect the public. The court did not consider improper factors and reached a reasonable result. There is no arguable merit to this issue.

Our review of the record discloses no other potential issues for appeal.

Therefore,

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

IT IS FURTHER ORDERED that Attorney Herrick is relieved of further representation of Gurney in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals