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DISTRICT II

January 30, 2013

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Kenosha, WI 53140

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

2012AP2482-CRNM State of Wisconsin v. Lloyd Randle, Jr. (L.C. #2011CM488)

Before Gundrum, J.[1]

Lloyd Randle, Jr. appeals from a judgment of conviction for disorderly conduct as a repeat offender. Randle's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Randle received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Randle and his brother were involved in a fight in a restaurant. Randle was charged as a repeat offender with two misdemeanors: disorderly conduct and battery. Randle entered a guilty plea to the disorderly conduct charge as a repeater and the battery charge was dismissed. Randle was sentenced immediately after entry of his plea. As agreed, the prosecution recommended that Randle be placed on probation. Sentence was withheld and Randle was placed on probation for eighteen months.[2]

The no-merit report first addresses the potential issue of whether Randle's plea was not knowingly, voluntarily, and intelligently entered. We agree with the report's ultimate conclusion that an argument that the plea was not knowing, intelligent and voluntary lacks legal merit but observe two parts of the plea taking warrant further discussion. During the plea colloquy, the trial court did not give Randle the deportation warning required by WIS. STAT. § 971.08(2). We cannot simply rely on the inclusion of that warning in the plea questionnaire form Randle signed because the trial court did not question Randle about his execution and understanding of the plea questionnaire and the plea questionnaire may not substitute for a personal, in-court colloquy when one is required. ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. However, because the circuit court docket reflects that Randle is an African-American, Randle could not show that his plea is likely to result in deportation and the failure to give the

[2] Prior to the commencement of this appeal, Randle's probation was revoked. The sentence imposed after the revocation of probation is not before the court in this appeal.

deportation warning provides no grounds for relief. *See* ***State v. Douangmala***, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1.

We also note that during the plea colloquy, Randle was not asked whether he admitted the prior misdemeanor convictions that formed the basis for his conviction as a repeat offender under WIS. STAT. § 939.62. *See* ***State v. Goldstein***, 182 Wis. 2d 251, 261, 513 N.W.2d 631 (Ct. App. 1994) (highlighting that a simple and direct question to the defendant during the plea colloquy can satisfy the requirement in WIS. STAT. § 973.12(1) that the prior conviction be "admitted by the defendant or proved by the state"). We are satisfied that despite no direct admission of the prior convictions, the record demonstrates Randle's admission of being a repeat offender. During the plea colloquy, Randle expressed his understanding that the prosecution would be required to prove that he had three prior misdemeanor convictions. The criminal complaint set forth the three prior convictions. Randle personally stipulated to the sworn criminal complaint. The complaint, as admitted by Randle, stands as proof of the prior convictions. *See* ***State v. Holan***, No. 2011AP1717-CR, unpublished slip op. ¶16 (WI App Jan. 31, 2012).[3] There is no arguable merit to a claim that § 973.12(1) was not complied with or that Randle's plea was not otherwise knowingly, voluntarily, and intelligently entered.

The no-merit report also discusses whether the sentence was the result of an erroneous exercise of discretion. Although the sentencing court's remarks were brief, the court focused on the nature of the crime and Randle's behavior in the public place. The court also expressed a desire to permit Randle to cooperate with the child support agency and obtain full-time

[3] ***State v. Holan***, No. 2011AP1717-CR, unpublished slip op. (WI App Jan. 31, 2012), is properly cited for persuasive value under WIS. STAT. RULE 809.23(3)(b).

employment, in other words, Randle's rehabilitative needs. These were proper considerations and demonstrate a proper exercise of discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶40, 270 Wis. 2d 535, 678 N.W.2d 197 (the basic objectives of the sentence include "the protection of the community, punishment of the defendant, rehabilitation of the defendant and deterrence to others").

Our review of the record discloses no other potential issues for appeal.[4] Accordingly, this court accepts the no-merit report, affirms the conviction and discharges appellate counsel of the obligation to represent Randle further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Steven P. Cotter is relieved from further representing Lloyd Randle, Jr. in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

[4] We note that the court reporter was unable to produce a transcript of Randle's April 7, 2011 initial appearance before the court commissioner because the recording was inaudible. The lack of a transcript does not give rise to any possible issue for appeal. A defendant's valid guilty plea waives the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.