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DISTRICT II

March 6, 2013

To:

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

2012AP2648-CRNM State of Wisconsin v. Malcolm C. Moseley (L.C. # 2011CF876)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Malcolm C. Moseley appeals from a judgment convicting him of burglary of a building or dwelling. Moseley's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Moseley received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with arguable

merit for appeal. Therefore, we summarily affirm the judgment and remand with directions.² See RULE 809.21.

The no-merit report addresses the following appellate issues: (1) whether Moseley's plea of no contest was knowingly, intelligently, and voluntarily entered; and (2) whether the circuit court erroneously exercised its discretion at sentencing.

With respect to the entry of the no contest plea, the record shows that the circuit court engaged in a colloquy with Moseley that satisfied the requirements of WIS. STAT. § 971.08(1)(a), *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and *State v. Hampton*, 2004 WI 107, ¶¶33, 38, 274 Wis. 2d 379, 683 N.W.2d 14. In addition, a signed plea questionnaire and waiver of rights form was entered into the record. We agree with counsel that any challenge to the entry of Moseley's no contest plea would lack arguable merit.

With respect to the sentence imposed, the record reveals that the circuit court's sentencing decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). Under the circumstances of the case, which were aggravated by Moseley's prior record, the sentence of four years of imprisonment does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to Moseley's sentence would lack arguable merit.

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

² Remand is necessary to correct the judgment of conviction. The judgment erroneously describes the offense as burglary of a building or dwelling. The judgment should be corrected to reflect that Moseley was actually found guilty of burglary of a building or dwelling as a party to a crime.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Leonard Kachinsky of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Leonard Kachinsky is relieved of further representation of Moseley in this matter.

IT IS FURTHER ORDERED that, on remand, the judgment of conviction shall be corrected to reflect that Moseley was found guilty of the crime of burglary of a building or dwelling as a party to a crime.

Diane M. Fremgen
Clerk of Court of Appeals