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DISTRICT I/IV

May 10, 2013

To:

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

2012AP956-CRNM State of Wisconsin v. Johnny Dwane Lee, Jr. (L.C. #2011CF1329)

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

Attorney Hannah Schieber, appointed counsel for Johnny Lee, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Counsel provided Lee with a copy of the report, he responded to it, and counsel filed a supplemental no-merit report. We conclude that this case is appropriate for summary

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

disposition. *See* WIS. STAT. RULE 809.21. After our independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

Lee pled guilty to one count of first-degree reckless injury. The court imposed a sentence of twelve years of initial confinement and ten years of extended supervision.

The no-merit report addresses whether Lee'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 Lee 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 protection of the public, Lee's character, his generally responsible history, the dangerous nature of the offense, and other factors. The court did not consider improper factors, and reached a reasonable result. There is no arguable merit to this issue.

In Lee's response, he asserts that the court erred at sentencing by relying on its assessment of Lee as "showing off" and being a participant in "a broader culture of macho," and noting that he stayed out late at bars. Lee may disagree with these descriptions, but we see no basis to argue there was legal error in the court holding these opinions about Lee or considering them as relevant to his character in deciding on a sentence.

Lee also asserts that the court erred by allowing a detective to speak at sentencing. As the no-merit report points out, the court may hear relevant statements at sentencing. WIS. STAT. § 972.14(3)(b). Lee asserts that the detective was incorrect in stating that police had contacts with Lee in a particular area, which may have implied that he was a drug dealer. In the supplemental no-merit report, counsel reports that it may well be true that the detective mis-identified the area Lee was associated with when speaking to the court. However, counsel further states that there is no basis to conclude that the court actually relied on that information in sentencing Lee. We agree.

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 Schieber is relieved of further representation of Lee in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals