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DISTRICT II

June 5, 2013

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

2013AP338-CRNM State of Wisconsin v. Terrence D. Jammerson (L.C. #2010CF564)

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

Terrence D. Jammerson appeals from a judgment convicting him of hit and run resulting in death and second-offense operating a motor vehicle while intoxicated (OWI). His appellate counsel 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). Jammerson received a copy of the report and was notified of his right to file a response but did not exercise it. Upon consideration of the no-merit report and

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

our independent review of the record as mandated by ***Anders***, we conclude that the 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. We affirm the judgment and relieve Attorney Carl W. Chessir of further representing Jammerson in this matter.

Jammerson entered guilty pleas to hit and run resulting in death and second-offense OWI. On the hit and run, the trial court sentenced him to ten years' imprisonment, bifurcated as five years of initial confinement and five years of extended supervision, and revoked his driver's license for five years. On the OWI, it sentenced him to six months' incarceration, to be served concurrently, and $1,000 fine. This no-merit appeal followed.

The no-merit report addresses whether Jammerson's guilty pleas were knowingly, voluntarily, and intelligently entered. The record confirms that the court engaged in a thorough colloquy satisfying the requirements of WIS. STAT. § 971.08(1), ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. The court recited the elements of the crime to him, *see* ***Bangert***, 131 Wis. 2d at 268, properly used his signed plea questionnaire in conjunction with the substantive colloquy, *see* ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794, and, based on the defense's stipulation, used the criminal complaint to ascertain that the plea had a factual basis, ***State v. Harrington***, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994). Noting that the plea questionnaire indicated that Jammerson had taken medication within the past twenty-four hours, the court ascertained at several junctures that he understood the proceedings. No issue of merit could arise from the plea taking.

The no-merit report also considers whether the sentence represented a proper exercise of discretion. Sentencing is left to the discretion of the trial court, and appellate review is limited to determining whether that discretion was erroneously exercised. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The court must address sentencing objectives that include the protection of the public, punishment and rehabilitation of the defendant, and deterrence, ***id.***, ¶40, and must provide a "rational and explainable basis" for the sentence it imposes to allow this court to ensure that discretion in fact was exercised, ***id.***, ¶¶39, 76. The weight to be given the various factors is within the court's discretion. ***Cunningham v. State***, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977).

We agree with appellate counsel that no basis exists to disturb the sentence. The court thoroughly explained the basis for and objectives of the sentence imposed. The court considered mitigating factors, such as a statement from the mother of Jammerson's three children, a letter written on behalf of Jammerson, and Jammerson's respectful demeanor, remorse, and intelligence, and aggravating factors such as a victim-impact statement from the deceased's mother, and Jammerson's alcoholism and criminal history, which included several batteries.[2] Most troubling to the court was Jammerson's deliberate failure to stop and render aid to a fellow human being he had mortally, if accidentally, injured. The court explained why it could not order probation and stated that it felt compelled to order the sentence it did primarily for the protection of the community and for punishment. Jammerson faced twenty-five years' imprisonment on the hit and run and six months on the OWI. A sentence less than the maximum

[2] In addition, a charge of battery by a prisoner incurred while Jammerson was in the jail awaiting sentencing was dismissed and read in at his sentencing in this matter.

presumptively is not unduly harsh. *See* ***State v. Grindemann***, 2002 WI App. 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. We cannot say that the sentence imposed is so excessive or unusual as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Our review of the record discloses no other potential issues for appeal.

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 Carl W. Chessir is relieved of further representing Jammerson in this matter.

Diane M. Fremgen
Clerk of Court of Appeals