



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

March 26, 2019

To:

Hon. David A. Hansher
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

Hon. William S. Pocan
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St., Rm. 401
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Christopher D. Sobic
Assistant State Public Defender
735 N. Water St., Ste. 912
Milwaukee, WI 53202-4116

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Devante D. Downey-Gaddis 622316
Racine Correctional Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2018AP1452-CRNM State of Wisconsin v. Devante D. Downey-Gaddis
(L.C. # 2016CF714)

Before Brennan, Brash and Dugan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Devante D. Downey-Gaddis appeals a judgment of conviction entered upon his guilty plea to taking the vehicle of another without consent by threat of force while possessing a dangerous weapon (armed carjacking), as a party to a crime. He also appeals a postconviction

order denying his motion for relief from a DNA surcharge imposed in this matter. Appellate counsel, Attorney Christopher D. Sobic, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2017-18).¹ Downey-Gaddis did not file a response. Based upon our independent review of the record and the no-merit report, we conclude that no arguably meritorious issues exist for an appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, Downey-Gaddis and a co-actor approached A.P.G. as he sat in a Honda Accord parked on a city street in Milwaukee, Wisconsin, early in the morning of July 24, 2015. Downey-Gaddis struck A.P.G. with a handgun, ordered him out of the car, and demanded that he empty his pockets. Downey-Gaddis and his co-actor then took A.P.G.'s personal property, got into the Honda Accord, and drove away. In August 2015, police arrested Downey-Gaddis and two companions in the car. The State charged Downey-Gaddis with armed carjacking and armed robbery, both as a party to a crime.

Downey-Gaddis decided to resolve the charges with a plea bargain. He agreed to plead guilty to armed carjacking as a party to a crime, a Class C felony carrying maximum penalties of a \$100,000 fine and forty years of imprisonment. *See* WIS. STAT. §§ 943.23(1g), 939.05, 939.50(3)(c).² The State agreed to recommend a seventeen-year term of imprisonment and to move for dismissal of the armed robbery charge. The circuit court granted the State's motion to

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

² Downey-Gaddis was convicted and sentenced for his crime while the 2015-16 version of the Wisconsin Statutes was in effect. The relevant portions of those statutes are unchanged in the current version.

dismiss the armed robbery charge and accepted Downey-Gaddis's plea to armed carjacking as a party to a crime. The circuit court imposed a thirteen-year term of imprisonment, bifurcated as seven years of initial confinement and six years of extended supervision, and ordered Downey-Gaddis to serve the sentence consecutive to the sentence he was serving for an earlier conviction in another county. Pursuant to WIS. STAT. § 973.046(1r), the circuit court also imposed a \$250 DNA surcharge but ordered that Downey-Gaddis was not required to pay it if he had previously paid a DNA surcharge.

Downey-Gaddis filed a postconviction motion seeking to vacate the order requiring him to pay a DNA surcharge, and in support he showed that he had been ordered to pay a DNA surcharge in another criminal proceeding. A successor circuit court denied the motion, concluding that the surcharge could not be waived.³ See *State v. Cox*, 2018 WI 67, ¶25, 382 Wis. 2d 338, 913 N.W.2d 780.

In the no-merit report, appellate counsel examines whether Downey-Gaddis entered his guilty plea knowingly, intelligently, and voluntarily, whether the circuit court properly exercised its sentencing discretion, and whether Downey-Gaddis could pursue relief from the DNA surcharge. Our independent review of the record persuades us that appellate counsel properly analyzed those issues, and we agree with appellate counsel that they lack arguable merit. Additional discussion of those issues is not warranted.

³ The Honorable Williams S. Pocan presided over the plea and sentencing in this case and entered the judgment of conviction. The Honorable David A. Hansher presided over the postconviction proceedings and entered the order denying postconviction relief.

Appellate counsel does not discuss the circuit court's decision to find Downey-Gaddis eligible for the challenge incarceration program and the Wisconsin substance abuse program only after he completes six years of initial confinement. We conclude that Downey-Gaddis cannot mount an arguably meritorious challenge to his delayed eligibility for those programs.

Both the challenge incarceration program and the Wisconsin substance abuse program are prison programs offering substance abuse treatment. When an inmate successfully completes either program, his or her remaining initial confinement time is converted to extended supervision time. *See* WIS. STAT. §§ 302.045(1), 302.045(3m)(b), 302.05(1)(am), 302.05(3)(c)2. A circuit court has discretion to determine both a defendant's eligibility for the programs and the date on which the defendant's eligibility may begin. *See State v. White*, 2004 WI App 237, ¶¶2, 6-10, 277 Wis. 2d 580, 690 N.W.2d 880; WIS. STAT. § 973.01(3g)-(3m).⁴ We will sustain the circuit court's determinations if they are supported by the record and the overall sentencing rationale. *See State v. Owens*, 2006 WI App 75, ¶¶7-9, 291 Wis. 2d 229, 713 N.W.2d 187.

Here, the circuit court fashioned Downey-Gaddis's sentence in light of the mandatory sentencing factors of the seriousness of the offense, Downey-Gaddis's character, and the need to protect the public. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court emphasized that Downey-Gaddis had used a real gun during commission of the crime and that he struck the victim during the incident. The circuit court observed that, although Downey-Gaddis was cooperative in this case, he had failed to complete probation in connection

⁴ The Wisconsin substance abuse program was formerly known as the earned release program. Effective August 3, 2011, the legislature renamed the program. *See* 2011 Wis. Act 38, §19; WIS. STAT. § 991.11. The program is identified by both names in the current version of the Wisconsin Statutes. *See* WIS. STAT. §§ 302.05; 973.01(3g).

with a prior criminal conviction, and that his “anti-social ... behavior pattern” posed a threat to the public. While the circuit court acknowledged that Downey-Gaddis had a history of abusing “marijuana [and] some pills,” the circuit court placed greater weight on the conclusion that he had engaged in “predatory” activity that “make[s] people afraid to be on the streets of Milwaukee.” The sentencing rationale thus fully explained the decision to delay Downey-Gaddis’s eligibility for substance abuse treatment programs that, upon completion, would reduce his time in initial confinement. Because the circuit court properly exercised its sentencing discretion, any claim to the contrary would lack arguable merit.

Our independent review of the record does not disclose any other potential issues for appeal. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the judgment of conviction and postconviction order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Christopher D. Sobic is relieved of any further representation of Devante D. Downey-Gaddis on appeal. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals