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DISTRICT IV

January 11, 2024

To:

Hon. Margaret Mary Koehler
Circuit Court Judge
Electronic Notice

Lia Leahy
Clerk of Circuit Court
Iowa County Courthouse
Electronic Notice

Marcella De Peters
Electronic Notice

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David M. Hudnut 693185
Stanley Correctional Inst.
100 Corrections Dr.
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You are hereby notified that the Court has entered the following opinion and order:

2022AP62-CRNM State of Wisconsin v. David M. Hudnut (L.C. # 2019CF129)

Before Graham, Nashold, and Taylor, 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).

David M. Hudnut appeals judgments of conviction for felony delivery of methamphetamine, and for misdemeanor possession of amphetamine. Attorney Marcella De Peters has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2021-22).[1] The no-merit report addresses whether there would be arguable merit to a challenge to Hudnut's no-contest pleas or the sentences imposed by the circuit court.

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Hudnut was advised of his right to respond to the no-merit report, but he has not filed a response. Having independently reviewed the entire record as mandated by ***Anders v. California***, 386 U.S. 738, 744 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

The State charged Hudnut with the felony offenses of delivery of methamphetamine and maintaining a drug trafficking place. Pursuant to a plea agreement, Hudnut pled no contest to felony delivery of methamphetamine and to a reduced charge of misdemeanor possession of amphetamine. In exchange, the State agreed to ask the circuit court to defer entry of judgment on the felony delivery count; to later dismiss that count if the terms of a Deferred Judgment Agreement (DJA) were satisfied; and to withhold sentence and impose a twelve-month term of probation on the misdemeanor possession count.

The circuit court accepted Hudnut's pleas after conducting a plea colloquy and reviewing a signed plea questionnaire and waiver of rights form, with attached jury instructions. The court then proceeded directly to sentencing and adopted the joint recommendation of the parties. It deferred entry of judgment on the felony delivery count under the terms of the DJA, and withheld sentence and imposed twelve months of probation on the misdemeanor possession count.

The State subsequently moved to rescind the DJA, which Hudnut did not oppose. Additionally, the Department of Corrections revoked Hudnut's probation. The court held a sentencing hearing as to both the felony delivery and misdemeanor possession counts. The parties jointly recommended sentences of eight years of initial confinement and five years of extended supervision on the felony delivery count and nine months of concurrent jail time on the

misdemeanor possession count. The court adopted the joint sentencing recommendation. The court also made Hudnut eligible for the Substance Abuse Program and granted Hudnut 83 days of sentence credit, on counsels' stipulation.

The no-merit report addresses whether there would be arguable merit to Hudnut withdrawing his pleas. *See* ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. We agree with counsel's assessment that a challenge to Hudnut's pleas would be frivolous.

A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. ***Id.*** Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Hudnut signed, satisfied the court's mandatory duties to personally address Hudnut and determine information such as Hudnut's understanding of the nature of the charges and the range of punishments he faced, the constitutional rights he waived by entering his pleas, and the direct consequences of his pleas. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. The court personally informed Hudnut that it was not bound by the plea agreement, as required by ***State v. Hampton***, 2002 WI App 293, ¶9, 259 Wis. 2d 455, 655 N.W.2d 131. There is no indication of any other basis for plea withdrawals. A valid guilty or no-contest plea constitutes a waiver of all nonjurisdictional defects and defenses. ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

The no-merit report also addresses whether there would be arguable merit to a challenge to Hudnut's sentences. We agree with counsel that this issue lacks arguable merit. Because Hudnut received the sentences he affirmatively approved, he is barred from challenging the

sentences on appeal. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 517-18, 451 N.W.2d 759 (Ct. App. 1989). We discern no basis to challenge the sentences imposed by the circuit court.[2]

Our independent review of the record discloses no other potential issues for appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders***.

Therefore,

IT IS ORDERED that the judgments of conviction are modified to reflect that the sentencing after revocation of probation was imposed on count two, not count one, and 83 days of sentence credit were also ordered on count 2; the judgments are summarily affirmed as corrected. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Marcella De Peters is relieved of any further representation of David M. Hudnut in this matter pursuant to WIS. STAT. RULE 809.32(3).

[2] There are clerical errors in the judgments of conviction that we order corrected. *See* ***State v. Schwind***, 2019 WI 48, ¶30 n.5, 386 Wis. 2d 526, 926 N.W.2d 742 ("Correcting a clerical error in a judgment does not constitute a modification of that judgment; rather, it is simply a correction of the record to reflect the judgment the circuit court actually rendered."). The judgments of conviction incorrectly state that Hudnut was sentenced after revocation on count one, felony delivery of methamphetamine, rather than count two, misdemeanor possession of amphetamine. However, the record reveals that the sentence after revocation was imposed on count two, not count one. Additionally, the sentence credit awarded by the circuit court appears only on the felony judgment of conviction. Because Hudnut's sentences were imposed to run concurrently, he was entitled to sentence credit on both sentences. *See* ***State v. Carter***, 2007 WI App 255, ¶30, 306 Wis. 2d 450, 743 N.W.2d 700. While Hudnut has now served the full nine months of jail time for the misdemeanor conviction and there is no arguable merit to this issue as it is moot, *see* ***State v. Barfell***, 2010 WI App 61, ¶9, 324 Wis. 2d 374, 782 N.W.2d 437, we correct the error in the interest of completeness. On remand, the circuit court may either correct the errors in the judgments or direct the clerk's office to make the corrections. ***State v. Prihoda***, 2000 WI 123, ¶5, 239 Wis. 2d 244, 618 N.W.2d 857.

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

Samuel A. Christensen
Clerk of Court of Appeals