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DISTRICT I

August 8, 2013

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

2012AP2823-CRNM State of Wisconsin v. Eugene Vincent Wise (L.C. # 2012CF2626)

Before Curley P.J., Fine and Brennan, JJ.

Eugene Vincent Wise appeals a judgment convicting him of one count of felony retail theft. Appellate counsel, Timothy L. Baldwin, filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2011-12),¹ and *Anders v. California*, 386 U.S. 738, 744 (1967). Wise did not file a response, although he was informed of his right to do so. After considering the no-merit report and conducting an independent review of the record, we

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

agree with counsel's assessment that there are no arguably meritorious appellate issues. Therefore, we summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether there would be arguable merit to an appellate challenge to Wise's guilty plea.² The no-merit report states that Wise informed Baldwin that he does not wish to withdraw his guilty plea. Moreover, there would be no basis for withdrawing the plea because the plea colloquy complied in all respects with the requirements of WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). The circuit court addressed whether Wise understood the elements of the charge against him, the maximum penalties he faced, and the constitutional rights he would be waiving by entering a plea. The circuit court ascertained that Wise had reviewed a plea questionnaire and waiver-of-rights form with his attorney and that he understood the information explained on that form. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Wise acknowledged that the facts alleged in the complaint were true and provided a sufficient factual basis for the plea. We therefore conclude that there would be no arguable merit to an appellate challenge involving the plea.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion. The circuit court sentenced Wise to three years of imprisonment, with one year of initial confinement and two years of extended supervision. The circuit court placed primary emphasis on the fact that Wise had dozens of prior

² Wise's lawyer, Timothy Baldwin, followed some of the *federal* rules of procedure in preparing this no-merit report, rather than the Rules of Appellate Procedure found in Chapter 809 of the Wisconsin Statutes. Baldwin is reminded to follow the proper procedural rules in future filings.

arrests for retail theft and multiple prior convictions but he kept returning to crime to support his drug addiction. The circuit court concluded that the only way to protect the public from continuing thefts was to place Wise in prison. The circuit court explained its application of the various sentencing considerations in accordance with the framework set forth in *State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. We therefore conclude that there would be no arguable merit to a challenge to the sentence on appeal.

The no-merit report next addresses whether there would be arguable merit to a claim that Wise's lawyer was constitutionally ineffective. To establish that, a defendant must show both that his lawyer's performance was deficient and his lawyer's deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Wise's trial lawyer ably advocated for Wise, trying to resolve the case with a probationary sentence so that Wise could return to college at the start of the semester. Based on our review of the trial court transcripts, we conclude that there is no basis for a claim that Baldwin ineffectively represented Wise.

Our independent review of the record reveals no potential issues for appeal. Therefore, we affirm the judgment of conviction and relieve Attorney Baldwin of further representing Wise in this matter.

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Timothy L. Baldwin is relieved of any further representation of Wise in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals