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DISTRICT II

December 27, 2013

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

2013AP510-CRNM State of Wisconsin v. Jeremiah Brown (L.C. # 2009CF1246)

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

Jeremiah Brown appeals from a judgment convicting him on his guilty pleas of second-degree reckless homicide with a dangerous weapon contrary to WIS. STAT. § 940.06(1) and WIS. STAT. § 939.63(1)(b) (2009-10)[1] and of being a felon in possession of a firearm contrary to WIS. STAT. § 941.29(2). Brown's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12) and ***Anders v. California***, 386 U.S. 738 (1967). Brown received a copy

[1] Unless otherwise noted, all subsequent references to the Wisconsin Statutes are to the 2009-10 version.

of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by ***Anders*** and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21 (2011-12).

The no-merit report contains numerous spelling and other errors. For example, the table of contents states that the first argument reviews evidence supporting the jury's verdict. There was no jury trial in this case; Brown entered two guilty pleas. The body of the no-merit report discusses the entry of the guilty pleas. In the future, counsel shall review his no-merit reports to insure that they are as error-free as possible before filing and serving.

The no-merit report addresses the following possible appellate issues: (1) whether Brown's guilty pleas were knowingly, voluntarily and intelligently entered and had a factual basis; (2) whether the circuit court misused its sentencing discretion; and (3) whether the circuit court erred when it denied Brown's motion to suppress evidence arising from a warrantless entry into the residence in which he was arrested. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of his guilty pleas, Brown answered questions about the pleas and his understanding of his constitutional rights during a thorough colloquy with the circuit court that complied with ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The record discloses that Brown's guilty pleas were knowingly, voluntarily and intelligently entered, ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that they had a factual basis, ***State v. Harrington***, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994). Additionally, the plea questionnaire and waiver of rights form Brown signed is competent

evidence of knowing and voluntary pleas. ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). Although a plea questionnaire and waiver of rights form may not be relied upon as a substitute for a substantive in-court personal colloquy, it may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time a plea is taken. ***Hoppe***, 317 Wis. 2d 161, ¶¶30-32. We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Brown's guilty pleas.

With regard to the sentences, the record reveals that the sentencing court's discretionary decision had a "rational and explainable basis." ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. The court adequately discussed the facts and factors relevant to sentencing Brown to a twenty-five year term for second-degree reckless homicide and a concurrent five-year term for felon in possession of a firearm. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. In fashioning the sentence, the court considered the seriousness of the offenses, Brown's character and history of other offenses, that the severity of Brown's offenses had been increasing, Brown's previous failure on supervision, and the need to protect the public. The court stated reasons for refusing to consider the Challenge Incarceration Program or similar programs. The court properly considered the dismissed and read-in bail jumping offense. The sentences complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentences.

We agree with appellate counsel that there would be no arguable merit to a challenge to the circuit court's refusal to declare unlawful the warrantless entry into a residence to arrest Brown. When the officer knocked loudly on the residence's damaged door, the door swung open, and the officer saw Brown, the shooting suspect, on a couch in the residence. The court

also declined to suppress evidence located as a result of the warrantless entry (clothing Brown was wearing at the time of the shooting).[2] The suppression hearing record supports the circuit court's determination that exigent circumstances supported a warrantless entry into the residence where witnesses said Brown could be found a few hours after Brown allegedly shot the victim. ***State v. Ferguson***, 2009 WI 50, ¶19, 317 Wis. 2d 586, 767 N.W.2d 187. In the alternative, the court ruled that even if the warrantless entry created a basis to suppress evidence, the evidence was subject to the doctrine of inevitable discovery and would have been discovered even if the police had not made an unlawful warrantless entry. ***State v. Lopez***, 207 Wis. 2d 413, 427-28, 559 N.W.2d 264 (Ct. App. 1996). Finally, the court applied the independent source doctrine and concluded that the allegations in support of the search warrant eventually secured for the residence had an independent source and were not based on the warrantless entry. Therefore, the search warrant was not tainted by the warrantless entry. ***State v. Carroll***, 2010 WI 8, ¶44, 322 Wis. 2d 299, 778 N.W.2d 1. The warrantless entry does not create an issue with arguable merit on appeal.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report, affirm the judgment of conviction and relieve Attorney David Lang of further representation of Brown in this matter.

[2] Although Brown also sought to suppress his inculpatory statements, the parties agreed that a ruling on that motion would only be required if the case went to trial. Because Brown entered guilty pleas, the circuit court never decided this motion. Brown is bound by the waiver of this motion. ***State v. Wilkens***, 159 Wis. 2d 618, 624, 465 N.W.2d 206 (Ct. App. 1990).

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21 (2011-12).

IT IS FURTHER ORDERED that Attorney David Lang is relieved of further representation of Jeremiah Brown in this matter.

Diane M. Fremgen
Clerk of Court of Appeals