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DISTRICT II

January 21, 2015

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

2014AP2629-CRNM State of Wisconsin v. Donny W. Buchanan (L.C. #2012CF99)
2014AP2630-CRNM State of Wisconsin v. Donny W. Buchanan (L.C. #2012CF100)
2014AP2631-CRNM State of Wisconsin v. Donny W. Buchanan (L.C. # 2012CF1348)

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

Donny Buchanan appeals from judgments of conviction for uttering a false check, possession of marijuana as a second and subsequent offense, two counts of delivery of heroin as a repeater and as second and subsequent offenses, possession of heroin as a repeater and as a second and subsequent offense, and two counts of felony bail jumping as a repeater. His

appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Buchanan received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the records, we conclude that the judgments 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.

Buchanan entered guilty pleas to the charges of which he is convicted.[2] The complaint charging the heroin and bail jumping crimes included fifteen other counts which were dismissed as read-ins at sentencing. Sentencing enhancers for making drug sales in the vicinity of a park and school were also dropped. The prosecution agreed to recommend ten years' initial confinement in the heroin case but was free to argue on the length of extended supervision. At sentencing, the prosecution complied with the plea agreement. Under a combination of concurrent and consecutive sentences, Buchanan was sentenced to a total of twelve years' initial confinement and six years' extended supervision, and found to be eligible for the earned release and substance abuse programs. Restitution for the uttered check and the drug buy money was ordered.

The no-merit report addresses the potential issues of whether Buchanan's pleas were freely, voluntarily and knowingly entered, whether the sentence was the result of an erroneous

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

[2] Buchanan first entered guilty pleas to the uttering and possession of marijuana charges. Before sentencing on those convictions, he was charged with heroin sales and bail jumping. After his guilty plea to some of those charges, the cases were handled together for sentencing.

exercise of discretion, and whether Buchanan received the effective assistance of counsel. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further.

The no-merit report fails to discuss the circuit court's failure during the second of Buchanan's plea hearings to give the deportation warning required by WIS. STAT. § 971.08(2). However, the failure to give the warning is not grounds for relief because the record establishes that Buchanan was born in the United States and he could not show that his plea is likely to result in deportation. *See* ***State v. Douangmala***, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1.

Restitution was imposed for three of the drug buys for which the charges were dismissed as read ins. The circuit court did not address Buchanan during the plea colloquy regarding the impact of the read-in offenses at sentencing. *See* ***State v. Straszkowski***, 2008 WI 65, ¶¶5, 97, 310 Wis. 2d 259, 750 N.W.2d 835 (The circuit court "should advise a defendant that it may consider read-in charges when imposing sentence but that the maximum penalty of the charged offense will not be increased; that a circuit court may require a defendant to pay restitution on any read-in charges; and that the State is prohibited from future prosecution of the read-in charge."). However, Buchanan signed a plea questionnaire which stated his understanding that the judge could consider read-in charges at sentencing but the maximum penalty would not increase, that restitution could be ordered on any read-in charges, and that read-in charges could not later be prosecuted. The circuit court ascertained Buchanan's execution, reading of, and understanding of the plea questionnaire. Thus, if the circuit court was required to make

advisements about the read-in charges,[3] the failure to personally address Buchanan about the effects of the read-in charge does not render his plea unintelligent. *See* ***State v. Reed***, No. 2009AP3149-CR, unpublished slip op. ¶¶17-18 (WI App Jan. 11, 2011).[4] *See also* ***State v. Johnson***, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 441 (plea withdrawal is not justified unless the fundamental integrity of the plea is seriously flawed).

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Buchanan further in these appeals.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Patrick Flanagan is relieved from further representing Donny Buchanan in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

[3] It appears unsettled whether the advisements outlined in ***State v. Straszkowski***, 2008 WI 65, ¶¶5, 97, 310 Wis. 2d 259, 750 N.W.2d 835, are part of the circuit court's duties during a plea colloquy. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶19, 23, 317 Wis. 2d 161, 765 N.W.2d 794 (claim that the circuit court failed to notify the defendant that the read-in offenses could be considered at sentencing targeted the court's mandatory plea colloquy duties); ***State v. Lackershire***, 2007 WI 74, ¶28 n.8, 301 Wis. 2d 418, 734 N.W.2d 23 (the supreme court declined to adopt the court of appeals' characterization of read-ins as "collateral consequences" and expressly declined to address a circuit court's obligation to explain the nature of read-in offenses).

[4] WISCONSIN STAT. RULE 809.23(3)(b) allows the citation of an unpublished authored opinion issued after July 1, 2009 for its persuasive value.