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DISTRICT II

February 11, 2015

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

2014AP173-CRNM	State of Wisconsin v. David A. Woods (L.C. # 2012CF431)
2014AP555-CRNM	State of Wisconsin v. David A. Woods (L.C. # 2012CM338)

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

In these consolidated appeals, David Woods appeals from judgments convicting him of two counts of burglary contrary to WIS. STAT. § 943.10(1m)(a) (2011-12),¹ and misdemeanor counts of theft, criminal damage to property and possession of tetrahydrocannabinols contrary to WIS. STAT. §§ 943.20(1)(a), 943.01(1) and 961.41(3g)(e). Woods's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738

¹ All subsequent references to the Wisconsin Statutes are to the 2011-12 version.

(1967).² Woods received a copy 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 judgments because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether Woods's guilty pleas were knowingly, voluntarily, and intelligently entered; (2) whether the circuit court misused its sentencing discretion; and (3) whether Woods received effective assistance from his trial counsel. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of his guilty pleas, Woods answered questions about the pleas and his understanding of his constitutional rights during a 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 Woods'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 Woods 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.

² On our own motion, we extend the time to file the WIS. STAT. RULE 809.32 no-merit report to May 19, 2014.

Hoppe, 317 Wis. 2d 161, ¶¶30-32. The circuit court gave Woods the proper advisements regarding the counts that were dismissed and read in. *State v. Straszkowski*, 2008 WI 65, ¶5, 310 Wis. 2d 259, 750 N.W.2d 835. We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Woods’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 (citation omitted). The court adequately discussed the facts and factors relevant to sentencing Woods to consecutive ten-year terms for the burglaries and three years of probation for the misdemeanors with stayed jail time. In fashioning the sentence, the court considered the seriousness of the offenses, the impact on the victims, Woods’s character and history of other offenses, Woods’s drug use and mental health issues, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The felony sentences complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. The court awarded the requested sentence credit. Woods stipulated to restitution. The circuit court gave reasons for requiring Woods to pay the DNA surcharge under WIS. STAT. § 973.046. *State v. Cherry*, 2008 WI App 80, ¶¶8-9, 312 Wis. 2d 203, 752 N.W.2d 393. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentences.

The no-merit report addresses whether Woods received effective assistance from his trial counsel. We normally decline to address claims of ineffective assistance of trial counsel if the issue was not raised by a postconviction motion in the circuit court. *State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979). However, because appointed counsel asks to be discharged from the duty of representation, we must determine whether such a claim would

have sufficient merit to require appointed counsel to file a postconviction motion and request a *Machner* hearing.

The no-merit report does not relate any specific complaint about trial counsel's performance, and Woods has not responded to the no-merit report to elaborate on any such claim. Our independent review of the record does not reveal the existence of an ineffective assistance claim.

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 judgments of conviction, and relieve Attorney Donna Odrzywolski of further representation of Woods in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the time to file the WIS. STAT. RULE 809.32 no-merit report is extended to May 19, 2014.

IT IS FURTHER ORDERED that the judgments of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Donna Odrzywolski is relieved of further representation of David Woods in this matter.

Diane M. Fremgen
Clerk of Court of Appeals