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DISTRICT II

April 8, 2015

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

2014AP1892-CRNM State of Wisconsin v. Byron L. Baker (L.C. #2012CF639)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Byron L. Baker appeals a judgment convicting him of knowingly operating a vehicle while suspended-causing great bodily harm and injury by intoxicated use of a vehicle. Baker's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Baker filed a response. Counsel then filed a supplemental no-merit report. After reviewing the record, counsel's reports, and Baker's

[1] All references to the Wisconsin Statutes are to the 2013-14 version.

response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment and remand with directions.[2] RULE 809.21.

Baker entered pleas to knowingly operating a vehicle while suspended-causing great bodily harm and injury by intoxicated use of a vehicle. The charges stemmed from actions occurring in June 2012. According to the complaint, Baker was driving with a suspended license when he crashed into another vehicle. The passengers in the other vehicle, two young boys, sustained serious injuries. One child had glass in his eye and needed stiches for lacerations on his head. The other child was knocked unconscious and suffered two skull fractures and a severe laceration to his head. While investigating the scene, police found a marijuana pipe in Baker's car. A test later revealed a small, but detectable amount of marijuana in Baker's blood. For his crimes, the circuit court imposed an aggregate sentence of five years of initial confinement followed by five years of extended supervision. This no-merit appeal follows.

The no-merit report first addresses whether Baker's pleas were knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Baker that satisfied the applicable requirements of WIS. STAT. § 971.08(1)(a) and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.[3] In addition, a signed plea questionnaire and waiver of rights form was entered into the record. That form and attachment setting forth the

[2] The judgment indicates that Baker's conviction for injury by intoxicated use of a vehicle was contrary to WIS. STAT. § 940.25(1)(a). It was actually contrary to § 940.25(1)(am). We remand the matter so that the judgment can be amended to correct this clerical error.

[3] There is one exception to this. The circuit court failed to provide the deportation warning required by WIS. STAT. § 971.08(1)(c). This failure does not present a potentially meritorious issue for appeal, however, as there is no indication that Baker's pleas are likely to result in his deportation, exclusion from admission to this country, or denial of naturalization. Section 971.08(2).

elements of the offenses are competent evidence of valid pleas. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). We agree with counsel that any challenge to the entry of Baker's pleas would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the circuit court's 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). In imposing an aggregate sentence of ten years of imprisonment, the court considered the seriousness of the offenses, Baker's character, and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the case, the sentence, which was well within the maximum possible penalty, does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Accordingly, we agree with counsel that a challenge to the circuit court's decision at sentencing would lack arguable merit.[4]

As noted, Baker filed a response to counsel's no-merit report. In it, he accuses the State of withholding his medical records, contrary to ***Brady v. Maryland***, 373 U.S. 83 (1963). He also

[4] In reviewing Baker's sentence, we note that the circuit court erroneously found him eligible for the Earned Release Program (ERP) (now known as the Substance Abuse Program). Baker cannot participate in that program because he was convicted of a crime under Chapter 940. *See* WIS. STAT. § 302.05(3)(a)(1). This error does not present a potentially meritorious issue for appeal because the court did not rely on Baker's ERP eligibility in fashioning its sentence.

accuses his trial counsel of various pre-plea incidents of ineffective assistance.[5] We are not persuaded that Baker's complaints amount to an issue of arguable merit for appeal. To begin, Baker cannot show a ***Brady*** violation because his medical records were not in the State's exclusive control. *See* ***State v. Sarinske***, 91 Wis. 2d 14, 36, 280 N.W.2d 725 (1979) ("***Brady*** requires production of information which is within the exclusive possession of state authorities."). Baker was free to obtain his own medical records. Moreover, by entering his pleas, Baker forfeited his right to appeal all nonjurisdictional defects, including claimed pre-plea incidents of ineffective assistance of counsel. *See* ***State v. Kelty***, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886 (a guilty or no contest plea forfeits all nonjurisdictional defects, including constitutional claims).[6]

Our independent review of the record does 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 and relieve Attorney Dustin C. Haskell of further representation in this matter.

Upon the foregoing reasons,

[5] Baker accuses his trial counsel of ineffective assistance for, among other things, (1) failing to obtain the victims' medical records; (2) failing to move to suppress Baker's blood test results; (3) failing to move to suppress a statement Baker made to police; (4) failing to challenge the Kenosha County Laboratory and its employees; (5) acting as a friend of the court instead of an advocate; and (6) not researching more about what causes impairment and whether any amount of marijuana in the blood should be criminalized. Baker, of course, did not express any of these concerns to the circuit court. Indeed, at sentencing, he lauded counsel's efforts, stating that she had "done the best that she can for me."

[6] In addition to the forfeiture of these issues, we note that the supplemental no-merit report cogently explains why there was no basis for a suppression motion and why there is no reason to believe that trial counsel did not obtain the victims' medical records.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21 and remanded with directions.

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved of further representation of Baker in this matter.

Diane M. Fremgen
Clerk of Court of Appeals