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October 21, 2015

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

2014AP1825-CRNM State of Wisconsin v. Deangelo A. Webster (L.C. # 2011CF5649)

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

Deangelo Webster appeals from a judgment convicting him of first-degree reckless homicide as party to the crime contrary to WIS. STAT. § 940.02(1) (2011-12).[1] Webster's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Webster 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

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

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 (2013-14).

The no-merit report addresses the following possible appellate issues: (1) whether Webster's guilty plea was knowingly, voluntarily and intelligently entered; and (2) whether the circuit court misused its sentencing discretion.[2] We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of his guilty plea, Webster answered questions about the plea 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 Webster's guilty plea was knowingly, voluntarily and intelligently entered, ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that it 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 Webster signed is competent evidence of a knowing and voluntary plea. ***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.

[2] Because the circuit court granted Webster's postconviction motion to vacate the WIS. STAT. § 973.046 DNA surcharge imposed at sentencing, we do not address any issue relating to the imposition of the surcharge.

Although Webster pled guilty as party to the crime, the circuit court did not confirm during the plea colloquy that Webster understood party-to-the-crime liability. Nevertheless, the court's omission did not render Webster's plea colloquy defective. In ***State v. Brown***, 2012 WI App 139, ¶1, 345 Wis. 2d 333, 824 N.W.2d 916, we held that a plea colloquy at which the circuit court fails to explain party-to-the-crime liability is not defective if the defendant admits to directly committing the act. Such an admission renders superfluous the explanation of party-to-the-crime liability. ***Id.*** Here, Webster stipulated to a complaint that recited his admission that he and others shot at the victim, i.e., that Webster directly committed the crime of first-degree reckless homicide. Therefore, the circuit court's failure to explain party-to-the-crime liability did not render the plea colloquy defective.

We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Webster's guilty plea.

With regard to the sentence, 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 Webster to a twenty-six-year term (eighteen years of initial confinement and eight years of extended supervision). In fashioning the sentence, the court considered the seriousness of the offense, Webster's character and cooperation with the State in another prosecution, 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 court stated reasons for declaring Webster ineligible for the challenge incarceration program, the earned release program, or a risk reduction sentence. The felony sentence complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. The circuit court properly ordered restitution

as part of a subsequent agreement to dismiss and read-in a misdemeanor case in which restitution was appropriate. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentence.

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 Mark Rosen of further representation of Webster in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21 (2013-14).

IT IS FURTHER ORDERED that Attorney Mark Rosen is relieved of further representation of Deangelo Webster in this matter.

Diane M. Fremgen
Clerk of Court of Appeals