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DISTRICT II

February 17, 2016

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

2014AP2853-CRNM State of Wisconsin v. Corey O. Brown (L.C. #2013CF1670)

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

Corey Brown appeals from a judgment convicting him of possessing heroin contrary to Wis. STAT. § 961.41(3g)(am) (2013-14)¹ as a second and subsequent offense, § 961.48(1)(b). Brown's appellate counsel filed a no-merit report pursuant to Wis. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Brown 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

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

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 809.21.²

The no-merit report addresses the following possible appellate issues: (1) whether the circuit court properly denied Brown's motion to suppress evidence from an allegedly unlawful traffic stop; (2) whether Brown's no contest plea was knowingly, voluntarily and intelligently entered and had a factual basis; and (3) whether the circuit court misused its sentencing discretion. We agree with appellate counsel that these issues do not have arguable merit for appeal.

The circuit court properly denied Brown's motion to suppress evidence due to an allegedly unlawful traffic stop. The circuit court found that the officer properly stopped Brown's vehicle after observing that the vehicle's license plate decals were partially obscured. In addition, Brown fled from the officer when he could have safely stopped in response to the squad car's emergency lights and siren. We agree with the circuit court that Brown committed a traffic violation, WIS. STAT. § 341.61(3) (improper use of registration evidence), and therefore the stop of Brown's vehicle was lawful. *County of Jefferson v. Renz*, 231 Wis. 2d 293, 310, 603 N.W.2d 541 (1999).

With regard to the entry of his no contest plea, Brown answered questions about the plea and his understanding of his constitutional rights during a colloquy with the circuit court that

² Our November 24, 2015 order identified an issue with arguable merit relating to the imposition of the DNA surcharge. We directed appellate counsel to consult with Brown. Brown advises that he desires to waive the arguably meritorious DNA surcharge issue.

complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The record discloses that Brown’s no contest 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 Brown 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. The record reveals that Brown, charged with committing a second and subsequent drug offense, WIS. STAT. § 961.48(1)(b), admitted his prior drug conviction. We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Brown’s no contest plea.³

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. The court adequately discussed the facts and factors relevant to sentencing Brown to a five-year term (three years of initial confinement and two years of extended supervision). In fashioning the sentence, the court considered the seriousness of the offense, Brown’s character, history of other offenses and substance abuse, and his prior failure

³ The circuit court did not warn Brown “the terms of a plea agreement, including a prosecutor’s recommendations, are not binding on the court” *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. This error was of no consequence because the State recommended the sentence contemplated by the plea agreement, and the court imposed that sentence. *State v. Johnson*, 2012 WI App 21, ¶¶12-14, 339 Wis. 2d 421, 811 N.W.2d 441. This issue lacks arguable merit for appeal.

on probation. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court declared Brown eligible for the Substance Abuse Program.⁴ The felony sentence 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 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.⁵ 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 Susan Alesia of further representation of Brown 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.

IT IS FURTHER ORDERED that Attorney Susan Alesia is relieved of further representation of Corey Brown in this matter.

Diane M. Fremgen
Clerk of Court of Appeals

⁴ The Substance Abuse Program was formerly known as the Earned Release Program. *See* 2011 Wis. Act 38, § 19.

⁵ As previously noted, Brown waived an arguably meritorious issue arising from the imposition of the DNA surcharge.