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DISTRICT II

September 7, 2016

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

2015AP1678-CRNM State of Wisconsin v. Treon Dwon Vaughn (L.C. #2014CF127)

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

Treon Dwon Vaughn appeals from a judgment of conviction entered upon his guilty plea to one count of attempting to flee or elude a traffic officer. Vaughn'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). Vaughn has filed a response to counsel's no-merit report. Upon consideration of the report, response and an independent review of the record, we conclude that the judgment

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

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.

During a traffic stop, while the investigating officer was checking the status of Vaughn's license, Vaughn turned on his car's ignition and sped away. While in pursuit, the officer observed Vaughn exceed sixty-five miles per hour in residential areas and fail to stop or even slow down at multiple stop signs and red traffic lights. The chase was discontinued for safety reasons and Vaughn was later apprehended and charged with attempting to flee a traffic officer, contrary to WIS. STAT. § 346.04(3). Vaughn pled guilty pursuant to a plea bargain wherein the State agreed to recommend an unspecified prison sentence and the defense was free to argue the appropriate disposition. The circuit court imposed the maximum sentence comprising eighteen months of initial confinement and two years of extended supervision, to run consecutive to a previously-imposed sentence. As the court was pronouncing the sentence, Vaughn got up and walked away while "uttering at the judge." The sentencing court found Vaughn ineligible for both the Challenge Incarceration and the Earned Release Programs "based on the record that's been created and his defiance of probation rules. He's to serve all his time, period."

Though not discussed in either counsel's no-merit report or Vaughn's response, we conclude that no issue of arguable merit arises from the plea-taking procedures in this case.[2] The

[2] Appellate counsel's no-merit report should have discussed the potential issue of whether Vaughn's plea was knowingly, intelligently and voluntarily entered. It is important that the no-merit report provide a basis for a determination that the no-merit procedure has been complied with. *See* ***State v. Allen***, 2010 WI 89, ¶¶58, 61-62, 72, 328 Wis. 2d 1, 786 N.W.2d 124 (when an issue is not raised in the no-merit report, it is presumed to have been reviewed and resolved against the defendant so long as the court of appeals follows the no-merit procedure). Consequently, we address this potential issue to demonstrate that the no-merit procedure has been followed. *See* ***id.***, ¶82 (difficult to know the nature and extent of the court of appeals' examination of the record when the court does not enumerate possible issues that it reviewed and rejected in its no-merit opinion).

record shows that the circuit court engaged in an appropriate plea colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1)(a), ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Additionally, the circuit court properly relied on Vaughn's signed plea questionnaire to establish his knowledge and understanding of his plea. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794; ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Any challenge to the plea-taking procedures in this case would be wholly frivolous.

Vaughn's guilty plea waived the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. As such, the no-merit report discusses whether there is arguable merit to a claim that trial counsel was ineffective for failing to investigate the police officer's motive in conducting the initial traffic stop, and potential impeachment evidence. [3] This court is satisfied that the no-merit report properly analyzes these issues as without arguable merit. Vaughn's response to the no-merit report does not address these potential claims and this court will not discuss them further.

Next, the no-merit report discusses the circuit court's exercise of its sentencing discretion. We agree with appellate counsel's conclusion that any challenge to Vaughn's

[3] 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 claims would have sufficient merit to require appointed counsel to file a postconviction motion and request a ***Machner*** hearing.

sentence would be without arguable merit.[4] In fashioning the sentence, the court considered the seriousness of the offense, the defendant's character and history of prior offenses, 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 sentencing court determined that probation would unduly depreciate the seriousness of the offense and that incarceration was necessary to protect the public and to address Vaughn's rehabilitative needs. The court considered positive factors such as Vaughn's educational and employment history, but properly determined that the "aggravating circumstances and the gravity of the offense and consideration of protection of the public" outweighed the mitigating circumstances. *See* ***Ziegler***, 289 Wis. 2d 594, ¶23 (the weight to be given to each factor is committed to the circuit court's discretion). Further, on the facts of this case and given the sentencing court's demonstrably proper exercise of discretion, we cannot conclude that the sentence imposed is so excessive or unusual as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

The final issue addressed in the no-merit report is whether Vaughn is entitled to sentence credit. We are satisfied that the no-merit report properly analyzes this issue as without arguable merit. Vaughn's sentence was ordered to run consecutive to a previously-imposed sentence and he is not entitled to dual credit. *See* ***State v. Boettcher***, 144 Wis. 2d 86, 87, 100, 423 N.W.2d 533 (1988) (where consecutive sentences are imposed, time spent in custody shall not be duplicatively credited to more than one sentence; credit will be applied to the sentence first

[4] Counsel's no-merit report also discusses the potential issue of whether trial counsel provided ineffective assistance by "failing to fight harder for [Vaughn] at sentencing." Vaughn's response to the no-merit report does not address this issue. We are satisfied that the no-merit report properly analyzes this potential claim as without arguable merit and will not discuss it further.

imposed). Vaughn's response to the no-merit report does not raise any issue relating to sentence credit and does not dispute appellate counsel's analysis and conclusion. We will not discuss this issue further.

Our review of the record discloses no other potential issues for appeal.[5] Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Vaughn further in this appeal. Therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Sara K. Brelie[6] is relieved from further representing Treon Dwon Vaughn in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

[5] Because Vaughn's crime was committed after January 1, 2014, no arguably meritorious issue arises from the imposition of the DNA surcharge under WIS. STAT. § 973.046.

[6] Attorney Nathan M. Jurowski submitted the no-merit report but subsequently withdrew from Vaughn's representation. Attorney Brelie was appointed as successor appellate counsel.