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November 30, 2016

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

2015AP2382-CRNM State of Wisconsin v. Richard L. Spencer (L.C. # 2011CF525)

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

Richard L. Spencer appeals from a judgment of conviction for burglary and an order denying his postconviction motion for sentence credit. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14),¹ and *Anders v. California*, 386 U.S. 738 (1967). Spencer filed a response to the no-merit report asserting that he is entitled to sentence credit. RULE 809.32(1)(e). Upon consideration of these submissions and an independent review

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

of the record, we conclude that the judgment 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.

Spencer was charged with burglary and three counts of theft after firearms stolen from a Walworth County gun shop were found when Illinois police officers executed a search warrant at Spencer's residence. A warrant for Spencer's arrest was issued on December 5, 2011. On August 19, 2014, Spencer was brought to Walworth County after he requested a speedy detainer disposition under WIS. STAT. § 976.05(3)(a).² On November 14, 2014, Spencer entered a guilty plea to the burglary charge and the theft charges were dismissed as read-ins at sentencing. The plea agreement also allowed for the dismissal as a read-in of a subsequently filed case for misdemeanor disorderly conduct as a repeater. The agreement also provided for a joint sentencing recommendation of four years' initial confinement and two years' extended supervision to be served concurrent to the Illinois sentence Spencer was then serving, and the submission of a DNA sample and payment of the DNA surcharge. After taking Spencer's guilty plea, the recommended sentence was imposed. In the exercise of its discretion, the circuit court determined that Spencer was not eligible for the Substance Abuse Program (SAP) or the Challenge Incarceration Program (CIP). Spencer filed a postconviction motion for sentence credit. He argued that he was entitled to ninety-one days of sentence credit for the days he spent

² Spencer was brought to Wisconsin for a January 29, 2013 appearance on his first request for a speedy detainer disposition. At that time, Spencer waived the detainer time limits so that he could return to the Illinois correctional system and complete ongoing medical treatment. After four days in the Walworth County jail in 2013, Spencer was returned to the Illinois correctional system.

in the Walworth County jail awaiting disposition and sentencing.³ The motion for sentence credit was denied.

The no-merit report addresses the potential issues of whether Spencer's plea was freely, voluntarily and knowingly entered, whether the sentence was the result of an erroneous exercise of discretion, and whether the circuit court erred in denying the motion for sentence credit. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit. The record shows that the trial court engaged in an appropriate colloquy and, with reliance on the plea questionnaire, made the necessary advisements and findings required by WIS. STAT. § 971.08(1), *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. Because the sentence imposed was the same as that recommended by Spencer, Spencer has no basis to challenge his sentence on appeal. See *State v. Magnuson*, 220 Wis. 2d 468, 471-72, 583 N.W.2d 843 (Ct. App. 1998). Further, the sentencing court properly exercised its discretion in determining that Spencer was not eligible for SAP or CIP. There is no arguable merit to a challenge to Spencer's plea or sentence.

Spencer's response to the no-merit report asserts that he is entitled to sentence credit for the days he was jailed in Wisconsin because of the pending charges. It is undisputed that when Spencer was jailed in Wisconsin, he was subject to confinement on an Illinois sentence. The circuit court found that the connection between Spencer's confinement in Wisconsin and the pending charges was broken by the fact that Spencer was otherwise subject to confinement. This

³ The ninety-one days included the four days Spencer was jailed between January 29 and February 1, 2013, and the days between his return to Wisconsin on August 19, 2014, and sentencing on November 14, 2014.

was correct under *State v. Beets*, 124 Wis. 2d 372, 369 N.W.2d 382 (1985). Beets was arrested for burglary and while awaiting disposition on the burglary charge, was sentenced after the revocation of probation on two unrelated drug convictions and began serving the sentence on the drug convictions. *Id.* at 374-75. After sentencing on the burglary conviction, Beets asserted entitlement to additional sentence credit for the period subsequent to his sentencing on the drug conviction and while awaiting, in prison, sentencing on the burglary conviction. *Id.* at 375. The court determined that there was no connection between Beets' confinement on the drug convictions and the pending burglary charge. *Id.* at 378. The court explained:

From that time on, Beets was in prison serving an imposed and unchallenged sentence; and whether he was also awaiting trial on the burglary charge was irrelevant, because his freedom from confinement—his right to be at liberty—was not in any way related to the viability of the burglary charge. His ability to make bail on the burglary charge became immaterial. Even had the burglary charge been dismissed, he would still have been in confinement. Thus, there is no logical reason why credit should be given on the burglary charge for his service of sentence on a separate crime.

Id. at 379.

Spencer is similarly situated. His confinement was required by the Illinois sentence he was serving. Even if Spencer had been granted bail⁴ or the charges in this case were dismissed, Spencer would still have been confined on the Illinois sentence. He is not entitled to credit simply because he served time in the Walworth County jail awaiting disposition of the charges in this case. There is no arguable merit to a claim that Spencer is entitled to sentence credit.

⁴ No bail was ever set in this case because Spencer was always subject to confinement on the Illinois sentence.

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

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Carl W. Chesshir is relieved from further representing Richard L. Spencer in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

⁵ The record does not include a transcript of the August 25, 2014 hearing at which Spencer waived his right to a preliminary hearing. The absence of the transcript does not matter because by entry of his guilty plea, Spencer forfeited any possible appellate issues from the proceedings conducted and rulings made before his plea. *See State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.