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August 16, 2017

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

2015AP2087-CRNM State of Wisconsin v. Tramell L. Grier (L.C. #2013CF281)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Tramell L. Grier appeals from a judgment convicting him of armed robbery as a party to a crime. Grier's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)¹ and *Anders v. California*, 386 U.S. 738 (1967). Grier filed a response. After

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

reviewing the record, counsel's report, and Grier's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

Grier was convicted following a no contest plea to armed robbery as a party to a crime. The charge stemmed from allegations that he and a codefendant robbed a man with a firearm outside of a hotel in the Village of Mount Pleasant. The circuit court sentenced Grier to ten years of initial confinement followed by five years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether Grier's no contest plea was knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Grier that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In addition, a signed plea questionnaire and waiver of rights form was entered into the record, along with the applicable jury instructions detailing the elements of the offense. We agree with counsel that a challenge to the entry of Grier's no contest plea 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 court's sentencing 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 making its decision, the court considered the seriousness of the offense, Grier'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, which were aggravated by

Grier's criminal record,² the sentence imposed 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). We agree with counsel that a challenge to Grier's sentence would lack arguable merit.

Finally, the no-merit report addresses whether Grier was afforded effective assistance of trial counsel. There is nothing in the record to suggest that Grier's trial counsel was ineffective. Indeed, at the plea hearing, Grier indicated that he was satisfied with the job that his counsel had done. Consequently, we are satisfied that the no-merit report properly analyzes this issue as without merit, and we will not discuss it further.

As noted, Grier filed a response to counsel's no-merit report. In it, he appears to argue that his plea was coerced and that he had a defense to the charge against him. There are two problems with these assertions. First, any suggestion of coercion is belied by the record. At the plea hearing, the circuit court specifically asked Grier, "Anyone threaten you or promise you anything in order to get you to plead to this offense?" He answered, "No." He also confirmed that he had enough time to talk to his attorney about the case and his plea. Second, Grier forfeited the right to present a defense when he entered his plea. *See State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886. For these reasons, we are not persuaded that Grier's response presents an issue of arguable merit.

² Grier had previously been convicted of multiple felony offenses including armed robbery.

Although not discussed in either the no-merit report or response, we note that the circuit court did not state a reason for requiring Grier to pay the \$250 DNA surcharge.³ While the circuit court erroneously exercises discretion when it fails to delineate the facts that influenced its determination, “regardless of the extent of the [circuit] court’s reasoning, we will uphold a discretionary decision if there are facts in the record which would support the [circuit] court’s decision had it fully exercised its discretion.” *State v. Payano*, 2009 WI 86, ¶41, 320 Wis. 2d 348, 768 N.W.2d 832 (citation omitted). We have rejected the notion that the circuit court must explicitly describe its reasons for imposing the DNA surcharge or otherwise use “magic words.” *State v. Ziller*, 2011 WI App 164, ¶¶12-13, 338 Wis. 2d 151, 807 N.W.2d 241. The court’s entire sentencing rationale may be examined to determine if imposition of the DNA surcharge is a proper exercise of discretion. *See id.*, ¶¶11-13.

For arguable merit to exist to a claim that the circuit court erroneously exercised its discretion in imposing the DNA surcharge, Grier would have to show that imposition of the surcharge was unreasonable. *Id.*, ¶12. In its sentencing remarks, the circuit court noted that Grier had been identified, in part, by the fact that his DNA was found on a hat worn by one of the robbers. Given the use of DNA testing in his case, Grier cannot show that the surcharge was unreasonable. Accordingly, we are satisfied that a challenge to the imposition of the surcharge would lack arguable merit.

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

³ At the time Grier committed his crime, the circuit court had discretion to impose the \$250 DNA surcharge. *See* WIS. STAT. § 973.046(1g) (2011-12).

be raised on appeal, we accept the no-merit report and relieve Attorney Michael S. Holzman of further representation 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 Michael S. Holzman is relieved of further representation of Grier in this matter.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals