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DISTRICT II

Amended as to trial court case number in 2016AP1042-CRNM as of September 29, 2017

September 27, 2017

To:

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

2016AP1041-CRNM	State of Wisconsin v. Hilmer C. Gildemeister (L.C. #2014CM463)
2016AP1042-CRNM	State of Wisconsin v. Hilmer C. Gildemeister (L.C. #2015CF396)

Before Gundrum, J.¹

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).

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

In these consolidated appeals, Hilmer Gildemeister appeals from judgments sentencing him after revocation of his probation (appeal No. 2016AP1041-CRNM, Fond du Lac County circuit court case No. 2014CM463) and convicting him of disorderly conduct as party to the crime contrary to WIS. STAT. § 947.01(1) (appeal No. 2016AP1042-CRNM, Fond du Lac County circuit court case No. 2015CF396). Gildemeister's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Gildemeister 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 independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgments because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

The no-merit report addresses the following possible appellate issues: (1) whether Gildemeister's no contest plea to disorderly conduct in No. 2016AP1042-CRNM was knowingly, voluntarily, and intelligently entered and had a factual basis and (2) whether the circuit court misused its sentencing discretion in both cases from which Gildemeister appeals. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of his no contest plea, Gildemeister 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. As part of the plea colloquy, the circuit court drew Gildemeister's attention to the plea questionnaire and waiver of rights form Gildemeister signed. The court confirmed that Gildemeister read and understood the questionnaire, pointed out the presence of the constitutional rights appearing on the front of the questionnaire, and confirmed that Gildemeister read and understood those rights. *Id.*, ¶¶30-32, 42 (although a plea questionnaire cannot be relied upon as a substitute for a

substantive in-court personal colloquy, the questionnaire may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time the plea is taken and the use of the questionnaire lessens the extent and degree of the requisite colloquy). The plea questionnaire form Gildemeister signed is competent evidence of a knowing and voluntary plea. *State v. Moerderdorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). The record discloses that Gildemeister'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).

The record also reveals that Gildemeister admitted his prior conviction for purposes of his status as a repeat offender. WIS. STAT. § 973.12(1). We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Gildemeister's no contest plea.

With regard to the sentences, 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 Gildemeister to a two-year term after revocation of his probation and consecutive two-year term for disorderly conduct. The misdemeanor sentences were enhanced because Gildemeister was a repeat offender. In fashioning the sentences, the court considered the seriousness of the offenses, Gildemeister's character and history of other 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 weight of the sentencing factors was within the circuit court's discretion. *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20. The sentences complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision and were properly enhanced because Gildemeister is a repeat offender. *State v.*

Anderson, 2015 WI App 92, ¶10, 366 Wis. 2d 147, 873 N.W.2d 82 (enhanced misdemeanor sentences must be bifurcated between initial confinement and extended supervision). The \$200 DNA surcharge for the disorderly conduct conviction was appropriately imposed. WIS. STAT. § 973.046(1r)(b). We agree with appellate counsel that there would be no arguable merit to a challenge to the sentences.

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 judgments of conviction and relieve Attorney Catherine Malchow of further representation of Gildemeister in these matters.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Catherine Malchow is relieved of further representation of Hilmer Gildemeister in these matters.

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

Diane M. Fremgen
Clerk of Court of Appeals