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**DISTRICT I/II**

October 18, 2017

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

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2016AP631-CRNM      State of Wisconsin v. Shawn Alexander Bridges  
(L.C. #2013CF1081)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

**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).**

Shawn Bridges appeals from a judgment<sup>1</sup> convicting him of being a felon in possession of a firearm contrary to WIS. STAT. § 941.29(2) (2013-14) and first-degree recklessly endangering safety contrary to § 941.30(1) (2013-14). Bridges also appeals from an order<sup>2</sup> denying without a hearing his postconviction motion seeking to withdraw his guilty pleas due to ineffective assistance of trial counsel. Bridges's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)<sup>3</sup> and *Anders v. California*, 386 U.S. 738 (1967). Bridges received a copy of the report and has filed a response. Upon consideration of the report, Bridges's response, and an independent review of the record as mandated by *Anders* and RULE 809.32, we modify the judgment and as modified, we summarily affirm the judgment and the order 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 Bridges's guilty pleas were knowingly, voluntarily and intelligently entered; (2) whether the circuit court misused its sentencing discretion; and (3) whether Bridges received effective assistance from his trial counsel. We agree with appellate counsel that these issues do not have

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<sup>1</sup> The judgment was entered by the Honorable Jonathan D. Watts.

<sup>2</sup> The order was entered by the Honorable Frederick C. Rosa.

<sup>3</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

arguable merit for appeal.<sup>4</sup> Bridges raises numerous issues in his response to counsel's no-merit report. We conclude that none of these issues has arguable merit for appeal.

### Guilty Pleas

With regard to the entry of his guilty pleas, Bridges answered questions about the pleas 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. The record discloses that Bridges's guilty pleas were knowingly, voluntarily and intelligently entered, *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that they 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 Bridges signed is competent evidence of knowing and voluntary pleas. *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. We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Bridges's guilty pleas.

In his response to counsel's no-merit report, Bridges argues that his counsel never informed him of the elements of the crimes. The circuit court informed Bridges of the elements during the

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<sup>4</sup> Counsel's no-merit report is riddled with errors, including typographical errors, misspellings, and the wrong defendant name. While these errors do not preclude our appellate review, counsel is warned that the court will closely scrutinize future filings from counsel for these kinds of unacceptable errors.

plea colloquy and before accepting Bridges's guilty pleas. This issue lacks arguable merit for appeal.

Postconviction, Bridges moved to withdraw his guilty pleas because he based his decision to plead guilty on his trial counsel's promises regarding his sentence. Counsel allegedly told him that he would receive between three and five years; Bridges received eleven years. In the motion, Bridges acknowledged that during the plea colloquy, the circuit court informed him that the court was not a party to the plea negotiations and was free to sentence him to the maximum possible penalty. The circuit court denied Bridges's postconviction motion without a hearing.

The circuit court has the discretion to deny a postconviction motion without a hearing if the motion is legally insufficient or if the record conclusively demonstrates that the defendant would not be entitled to relief. *State v. Allen*, 2004 WI 106, ¶12, 274 Wis. 2d 568, 682 N.W.2d 433. In denying Bridges's postconviction motion to withdraw his guilty pleas, the circuit court cited the thorough plea colloquy during which the court warned Bridges he could receive the maximum penalty. In addition, the court observed that Bridges's claim that he relied upon counsel's sentencing promises was premised upon the affidavits of family members and Bridges's girlfriend. In their affidavits, Bridges's family members and girlfriend alleged that trial counsel made representations to them about the likely sentence. However, the postconviction motion was not supported by an affidavit of Bridges averring that his counsel made any promises about the sentence to him. Rather, the motion alleged that the sentencing representations referred to in the affidavits "appear to be the same promises made to Mr. Bridges prior to entering his guilty pleas." The motion further alleges that if called upon to testify, Bridges "likely would testify that his trial counsel made promises to him as to the sentence he

would receive if he decided to enter guilty pleas....” These equivocal and conditional allegations do not clearly state that trial counsel made promises to Bridges and that Bridges would testify that these promises were made. We agree with the circuit court that the postconviction motion did not require a hearing. Under the foregoing circumstances, counsel’s allegedly incorrect prediction concerning Bridges’s sentence is not enough to support a claim of ineffective assistance of counsel. *State v. Provo*, 2004 WI App 97, ¶18, 272 Wis. 2d 837, 681 N.W.2d 272.

Bridges argues that his trial counsel was ineffective because he did not tell him that he could receive consecutive sentences. Even if counsel did not convey this information to Bridges, which we need not address, Bridges had this precise knowledge at the time he entered his guilty pleas. At the plea hearing, Bridges manifested his understanding of the following: the parties were free to argue regarding the length of the sentence, Bridges had no questions about the plea negotiation, no threats were made to induce Bridges to plead guilty, and the circuit court was not bound by any sentencing recommendations and could impose maximum and consecutive sentences. Any claim that Bridges did not understand that he could receive consecutive sentences is inconsistent with the record and with the position he took in the circuit court. *State v. Michels*, 141 Wis. 2d 81, 98, 414 N.W.2d 311 (Ct. App. 1987).

Bridges argues that his trial counsel should have discussed self-defense with him. At the plea hearing, Bridges stated that his counsel discussed self-defense and other possible defenses with him. In addition, the circuit court confirmed that Bridges read and understood the addendum to the plea questionnaire. The addendum stated that Bridges read the complaint and waived his defenses. Furthermore, at the plea colloquy, Bridges admitted that he committed the crime of first-degree recklessly endangering safety when he fired a rifle into a crowd multiple

times and that as a convicted felon, he possessed a firearm. Bridges stated that he was pleading guilty because he was guilty, that he was satisfied with his counsel, and that he had enough time to review his case.<sup>5</sup> This claim is inconsistent with Bridges's representations in the circuit court and lacks arguable merit. *See Michels*, 141 Wis. 2d at 98.

### Sentencing

At sentencing, the circuit court observed that thirty to thirty-five persons were present to make statements in support of Bridges. Counsel noted that all witnesses for Bridges would say essentially the same positive things about Bridges. During his allocution, Bridges admitted the conduct to which he pled guilty and conceded that he made wrong decisions.

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 (citation omitted). The court adequately discussed the facts and factors relevant to sentencing Bridges to consecutive terms of six years (four years of initial confinement and two years of extended supervision) for first-degree recklessly endangering safety and five years (three years of initial confinement and two years of extended supervision) for felon in possession of a firearm. In fashioning the sentences, the court considered the seriousness of the offenses, including that Bridges fired a weapon into or toward a crowd, Bridges's character, favorable character references, history of other offenses,<sup>6</sup> and the need to protect the public.

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<sup>5</sup> This statement renders inconsistent Bridges's claim that his trial counsel did not visit with him frequently enough.

<sup>6</sup> The circuit court did not place any weight on multiple "no-processed" cases in Bridges's record.

*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 circuit court had discretion to impose consecutive sentences, *State v. Larsen*, 141 Wis. 2d 412, 427, 415 N.W.2d 535 (Ct. App. 1987), and did so because Bridges committed two distinct crimes. The court properly declared Bridges ineligible for the Challenge Incarceration Program due to his age. WIS. STAT. § 302.045(2)(b). The court exercised its discretion by declaring Bridges ineligible for the Substance Abuse Program because that program would reduce his sentence more than warranted given the amount of punishment the circuit court deemed appropriate under the circumstances. The felony sentences 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 sentences.

In his response, Bridges argues that the State breached the plea agreement at sentencing. This claim was addressed and withdrawn at sentencing. At the first sentencing hearing, the State argued for the maximum sentence. Bridges's counsel objected on the grounds that the State's request for the maximum penalty breached the plea agreement. The parties and the circuit court discussed the plea agreement, which left each side free to argue for prison time of any length, and agreed that a transcript of the plea hearing was required to address the objection. At the adjourned sentencing, the court confirmed that the plea agreement allowed the State to argue about the length of the recommended prison term. Bridges stated on the record that he understood this aspect of the plea agreement. Trial counsel withdrew the breach claim and informed the court that he and Bridges had reviewed the plea hearing transcript together and were satisfied that there was no breach. Bridges told the court that he agreed with his counsel's

statement. Based upon this record, any claim that the State breached the plea agreement would lack arguable merit for appeal.

Bridges variously argues that the circuit court considered inaccurate information in sentencing him and that the circuit court should not have considered unproven conduct. The circuit court did neither. The argument is premised upon a contention that the circuit court considered that persons were wounded when Bridges fired his weapon into and toward the crowd. It is undisputed that there were two shooting victims in the vicinity. However, the court determined that there was inadequate proof that Bridges shot the male victim, and the female shooting victim denied that Bridges shot her. The court did not consider either the wounded persons or any unproven conduct in sentencing Bridges. This issue lacks arguable merit for appeal.

Bridges complains that the circuit court did not permit all of his witnesses to testify at sentencing. The circuit court has discretion to manage courtroom proceedings. See *Lentz v. Young*, 195 Wis. 2d 457, 465-66, 536 N.W.2d 451 (Ct. App. 1995) (courts have inherent discretionary power to control their dockets). Given Bridges's admissions at the plea hearing and the circuit court's consideration at sentencing of mitigating characteristics and circumstances, we see no misuse of discretion in limiting the number of witnesses Bridges wanted to present.

Bridges argues that his sentences were too harsh. We have already upheld the sentences as a proper exercise of the circuit court's discretion.



Bridges argues that his trial counsel was not prepared for sentencing and did not advocate for him at sentencing.<sup>7</sup> The record does not bear out Bridges's claim.

Our review of the record reveals an issue relating to the DNA surcharges appearing on the judgment of conviction.<sup>8</sup> At sentencing, the circuit court imposed a \$250 DNA surcharge without stating reasons for doing so. The judgment of conviction imposes two \$250 DNA surcharges. In February 2013, when Bridges committed the crimes in this case, only one DNA surcharge could have been imposed. WIS. STAT. § 973.046(1r) (2013-14); *State v. Williams*, 2017 WI App 46, ¶22, 377 Wis. 2d. 247, 900 N.W.2d 310. Imposing two DNA surcharges was an ex post facto violation. *State v. Radaj*, 2015 WI App 50, ¶¶35-36, 363 Wis. 2d 633, 866 N.W.2d 758. Therefore, we vacate one of the \$250 DNA surcharges and modify the judgment of conviction accordingly.

The circuit court did not state a reason for requiring Bridges to pay a single \$250 DNA surcharge. It appears that the circuit court viewed the DNA surcharge in this case as mandatory, which it was not under the law in effect at the time Bridges committed his crimes. At the time Bridges committed the crimes in this case, the imposition of a DNA surcharge was discretionary with the circuit court. *Radaj*, 363 Wis. 2d 633, ¶5. “[R]egardless 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

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<sup>7</sup> Bridges’s complaint that counsel was not ready for trial was waived by his guilty pleas.

<sup>8</sup> The no-merit report does not identify any issue relating to the DNA surcharges imposed in this case.

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, Bridges would have to show that imposition of the surcharge was unreasonable. *Id.*, ¶12. The record indicates that DNA evidence was collected and analyzed in this case. Given the use of DNA evidence in this case, Bridges cannot show that the single DNA surcharge was unreasonable.<sup>9</sup> Accordingly, we are satisfied that a challenge to the imposition of the surcharge would lack arguable merit.

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<sup>9</sup> We distinguish *State v. Williams*, 2017 WI App 46, 377 Wis. 2d 247, 900 N.W.2d 310. In *Williams* we held that imposition of a mandatory DNA surcharge for a single felony conviction when that decision was discretionary for the circuit court at the time the crime was committed is an ex post facto violation when applied to a defendant who previously gave a DNA sample when the current case did not involve a DNA sample. *Id.*, ¶26. The remedy for such an ex post facto violation is remand to the circuit court to apply the DNA surcharge statute in effect at the time the defendant committed the crimes of conviction. *Id.*, ¶27.

Here, the record supports a discretionary decision to impose a DNA surcharge because DNA evidence was collected and analyzed in this case. Unlike in *Williams* there is a connection between the imposition of the DNA surcharge and the use of DNA evidence in this case. *Id.*, ¶26. In this case, remanding for an exercise of circuit court discretion relating to the imposition of the DNA surcharge would not be a wise use of scarce judicial resources.

### Ineffective Assistance of Trial Counsel

In his response, Bridges complains that his appellate counsel was ineffective. This argument is outside the scope of this appeal. *State v. Knight*, 168 Wis. 2d 509, 520, 484 N.W.2d 540 (1992) (challenge to appellate counsel proceeds via a petition for a writ of habeas corpus).

Bridges argues that his trial counsel did not tell him that he would lose his appeal rights if he pled guilty. Bridges has not lost his appeal rights. This WIS. STAT. RULE 809.32 no-merit appeal is his direct appeal as of right. Appointed counsel discharges the duty of appellate representation by filing a no-merit report if, in the exercise of professional judgment, counsel concludes that the case lacks arguable merit for appeal. *State ex rel. Flores v. State*, 183 Wis. 2d 587, 605-06, 516 N.W.2d 362 (1994). As this opinion indicates, we agree with appellate counsel's assessment.

### Claims Waived by the Guilty Pleas or Lacking in Arguable Merit

A guilty plea waives the right to raise “nonjurisdictional defects and defenses, including claimed violations of constitutional rights.” *County of Racine v. Smith*, 122 Wis. 2d 431, 434, 362 N.W.2d 439 (Ct. App. 1984).

Bridges makes several arguments premised upon his desire to present witnesses at various stages of the proceeding. Bridges argues that he was deprived of the opportunity to present the 911 tape and call witnesses before and after the plea to demonstrate his innocence. Bridges also argues that he should have been able to cross-examine witnesses, and he faults his counsel for not attacking the credibility of various witnesses. Bridges gave up these

opportunities when he pled guilty. Furthermore, Bridges admitted the crimes at the plea hearing and sentencing. These issues lack arguable merit for appeal.

Bridges argues that his juvenile record was unlawfully used against him. This claim is not substantiated in the record. The earliest prior offense to which the circuit court referred dated back to 1990, after Bridges reached his eighteenth birthday.

Bridges alleges vindictive prosecution by the State. This issue was waived by Bridges's guilty pleas.

Bridges argues that he was not given access to the report of a defense-retained DNA expert. Bridges's guilty pleas waived challenges to the evidence. This issue lacks arguable merit for appeal.

Bridges asserts that he has letters absolving him from the crimes. Bridges admitted committing the crimes. This issue lacks arguable merit for appeal. *See Michels*, 141 Wis. 2d at 98.

### Conclusion

In addition to the issues discussed above, we have independently reviewed the record. Other than the DNA surcharge issue, 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, modify the judgment of conviction to delete one \$250 DNA surcharge, and as modified, we affirm the judgment. We affirm the order denying Bridges's postconviction motion. We remand this matter to the circuit court for the entry of an amended judgment of conviction deleting one of the

\$250 DNA surcharges. Once the amended judgment of conviction has been entered, Attorney Matt Last is relieved of further representation of Bridges in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that the judgment of conviction is modified to delete one \$250 DNA surcharge, and as modified, we affirm the judgment. This matter is remanded to the circuit court for the entry of an amended judgment of conviction deleting one of the \$250 DNA surcharges.

IT IS FURTHER ORDERED that once the amended judgment of conviction has been entered, Attorney Matt Last is relieved of further representation of Shawn Bridges in this matter.

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

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*