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March 14, 2018

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

2017AP301-CRNM State of Wisconsin v. Charles J. Coppens (L.C. #2016CF30)

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).

Charles Coppens appeals from a judgment convicting him of operating a motor vehicle while intoxicated (8th offense) contrary to WIS. STAT. § 346.63(1)(a) (2015-16).[1] Coppens's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v.***

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

California, 386 U.S. 738 (1967). Coppens received a copy of the report and has filed a response. Upon consideration of the report, Coppens's response, and an independent review of the record as mandated by ***Anders*** and RULE 809.32, we summarily affirm the judgment 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 Coppens's no contest plea was knowingly, voluntarily, and intelligently entered; (2) whether the circuit court misused its sentencing discretion; and (3) whether trial counsel was effective. 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, Coppens 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 Coppens's attention to the plea questionnaire and waiver of rights form Coppens signed. The court confirmed that Coppens read and understood the questionnaire, pointed out the presence of the constitutional rights appearing on the front of the questionnaire, discussed certain of those rights and confirmed that Coppens 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 Coppens signed is competent evidence of a knowing and voluntary plea. ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). The record discloses that Coppens'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). We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Coppens's no contest plea.

With regard to the sentence, 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 Coppens to the maximum available ten-year term (five years of initial confinement and five years of extended supervision). In fashioning the sentence, the court considered the seriousness of the offense, Coppens's history of alcohol abuse, Coppens's multiple prior offenses including operating while intoxicated with significantly elevated blood alcohol concentrations, and the need to protect Coppens and 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 sentence complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. The $250 DNA surcharge was appropriately imposed. WIS. STAT. § 973.046(1r)(a) (DNA surcharge must be imposed for each felony). We agree with appellate counsel that there would be no arguable merit to a challenge to the sentence.

The no-merit report addresses whether Coppens received effective assistance from his trial counsel. 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 a claim would

have sufficient merit to require appointed counsel to file a postconviction motion and request a ***Machner*** hearing. Our review of the record reveals no basis for an ineffective assistance of trial counsel claim.

In his response, Coppens complains that the plea agreement was not advantageous,[2] his sentence was harsh,[3] he was pressured into entering a no contest plea, and he did not have sufficient time to meet with his counsel. In light of the record before the court, Coppens's response does not present any issue with arguable merit. During the plea colloquy, Coppens affirmed that he understood the proceedings and his understanding of the proceedings was not impaired, no threats were made to induce his no contest plea, the facts set out in the complaint constituted the factual basis for the no contest plea and were reasonably true, and he had sufficient time to consult with counsel and was satisfied with counsel's representation. Finally, under Wisconsin law, Coppens's no contest plea waived all nonjurisdictional defects and defenses. ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. The claims in Coppens's response are at odds with the record and the positions he took in the circuit court. ***State v. Michels***, 141 Wis. 2d 81, 98, 414 N.W.2d 311 (Ct. App. 1987) (a party cannot take inconsistent positions). We conclude that Coppens's claims lack arguable merit for appeal.

Coppens complains that he did not want to waive the preliminary examination. The circuit court conducted a colloquy with Coppens to confirm his decision to waive the preliminary

[2] The plea agreement resulted in the dismissal of another felony offense and civil traffic citations.

[3] We have upheld the maximum sentence as a proper exercise of sentencing discretion. Therefore, we do not address this issue.

examination. Any issue relating to the preliminary examination was waived by the no contest plea. ***Lasky***, 254 Wis. 2d 789, ¶11. This issue lacks arguable merit for appeal,

Coppens protests that his probation officer, who was familiar with his history, authored the presentence investigation report. Although trial counsel raised this issue in the circuit court at sentencing, Coppens did not have any substantive complaints about the contents of the presentence investigation report. A presentence investigation report cannot be considered inherently biased merely because the presentence investigation report author is also the defendant's supervising agent. *See* ***State v. Thexton***, 2007 WI App 11, ¶5 and n.4, 298 Wis. 2d 263, 772 N.W.2d 560. This issue lacks arguable merit for appeal.

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 judgment of conviction, and relieve Attorney Daniel Goggin II of further representation of Coppens 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 Daniel Goggin II is relieved of further representation of Charles Coppens in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals