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DISTRICT II

June 6, 2018

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

2017AP807-CRNM State of Wisconsin v. Christopher D. Earvin (L.C. # 2016CF459)

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).

Christopher Earvin appeals from a judgment convicting him of substantial battery contrary to WIS. STAT. § 940.19(2) (2015-16).¹ Earvin's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Earvin

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

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 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 Earvin's guilty plea was knowingly, voluntarily, and intelligently entered and (2) whether the circuit court misused its sentencing discretion.

Our review of the record confirms appellate counsel's opinion that the plea colloquy complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794.² Additionally, the plea questionnaire form Earvin 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). 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. The record discloses that Earvin's guilty 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 in the criminal complaint, *State v. Harrington*,

² Our review of the plea colloquy reveals that the circuit court did not advise Earvin that it would not be bound by the terms of the plea agreement, including the prosecutor's recommendations. *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Here, however, the State agreed not to make any specific sentencing recommendation. Under these circumstances, we see no arguable merit to this issue.

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 Earvin's guilty plea.

We further agree with appellate counsel that the circuit court properly exercised its sentencing discretion in imposing a two-year term consecutive to a sentence currently being served. *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. In fashioning the sentence, the court considered the seriousness of the offense and that Earvin battered a fellow inmate. *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. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentence.

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 Katie Babe of further representation of Earvin 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 Katie Babe is relieved of further representation of Christopher Earvin in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals