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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:

2017AP1113-CRNM State of Wisconsin v. Napoleon J. Pickett (L.C. # 2016CF345)

Before Neubauer, C.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).

Napoleon Pickett appeals from a judgment convicting him of operating a motor vehicle while intoxicated (4th offense) contrary to WIS. STAT. § 346.63(1)(a) (2015-16).¹ Pickett's

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

appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Pickett 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 Pickett's guilty plea was knowingly, voluntarily, and intelligently entered; (2) whether the circuit court misused its sentencing discretion; and (3) whether the record supports an ineffective assistance of counsel claim. We agree with appellate counsel that these issues do not have arguable merit for appeal.

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. Additionally, the plea questionnaire form Pickett signed is competent evidence of a knowing and voluntary plea. See *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 Pickett's guilty plea was knowingly, voluntarily, and intelligently entered, see *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, see *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 Pickett's guilty plea.

We further agree with appellate counsel that the circuit court properly exercised its sentencing discretion in imposing a twelve-month jail term consecutive to a sentence currently being served. See *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, that Pickett committed the offense while released on extended supervision, and the need to protect the public. See *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. See *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentence.

The no-merit report addresses whether Pickett 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. See *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.

The no-merit report does not relate any specific complaint about trial counsel's performance, and Pickett has not responded to the no-merit report to elaborate on any such claim. Our independent review of the record does not reveal the existence of an ineffective assistance claim.

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 Pickett 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 Napoleon Pickett in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals