OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II/III

September 11, 2018

To:

Hon. Bruce E. Schroeder
Circuit Court Judge
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Thomas J. Erickson
Thomas J. Erickson Law Office
316 N. Milwaukee St., Ste. 550
Milwaukee, WI 53202

Michael D. Graveley
District Attorney
912 56th Street
Kenosha, WI 53140-3747

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Ronald E. Lafayette 261938
Fox Lake Corr. Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2016AP1629-CRNM
2016AP1634-CRNM
2016AP1635-CRNM

State of Wisconsin v. Ronald E. Lafayette
(L. C. Nos. 2014CF374, 2015CF404, 2015CF417)

Before Stark, P.J., Hruz and Seidl, 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).

Counsel for Ronald Lafayette has filed a no-merit report concluding no grounds exist to challenge Lafayette's convictions for possession with intent to deliver non-narcotics; possession of drug paraphernalia; delivering between one and five grams of cocaine; and possession of narcotic drugs, all four counts as a repeater and the last two counts as a second or subsequent

offense. Lafayette was informed of his right to file a response to the no-merit report and has not responded. Upon our independent review of the records as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21 (2015-16).[1]

In Kenosha County Circuit Court case No. 2014CF374, the State charged Lafayette with possession with intent to deliver non-narcotics on or near certain places; cocaine possession on or near certain places; possession of drug paraphernalia; and carrying a concealed weapon, all four counts as a repeater and the first two counts as a second or subsequent offense. In Kenosha County Circuit Court case No. 2015CF404, the State charged Lafayette with delivering between one and five grams of cocaine, as a second or subsequent offense, and two counts of felony bail jumping, all three counts as a repeater. In Kenosha County Circuit Court case No. 2015CF417, the State charged Lafayette with possession of narcotics, as a second or subsequent offense; possession of drug paraphernalia; and two counts of felony bail jumping, all four counts as a repeater.

Pursuant to a plea agreement in case No. 2014CF374, Lafayette pleaded guilty to possession with intent to deliver non-narcotics and possession of drug paraphernalia, both as a repeater but without the enhancers for a second or subsequent offense or for being on or near certain places. In exchange for his pleas, the State agreed it would dismiss the remaining charges outright and make no specific sentence recommendation, but it would discuss sentencing factors

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

it deemed relevant for the court to consider. With respect to case Nos. 2015CF404 and 2015CF417, Lafayette pleaded guilty to delivering between one and five grams of cocaine and possession of narcotics, both as a second or subsequent offense and both as a repeater. The State agreed to dismiss the remaining charges from these two cases, as well as an additional charge from another case, and it agreed to make no specific sentence recommendation other than "prison."

The sentences in all three cases were imposed at a single hearing. Out of a maximum possible forty-six-year sentence, the circuit court imposed concurrent and consecutive sentences resulting in a total of eight years' initial confinement followed by four years' extended supervision. Lafayette filed a postconviction motion for resentencing in which he challenged the sentencing court's determination that Lafayette was not eligible for the substance abuse program. Lafayette also claimed he was entitled to an additional 164 days of sentence credit. The circuit court denied Lafayette's motion for resentencing, but it granted the sentence credit sought.

The records disclose no arguable basis for withdrawing Lafayette's guilty pleas. The circuit court's plea colloquies, as supplemented by plea questionnaire and waiver of rights forms that Lafayette completed, informed Lafayette of the elements of the offenses, the penalties that could be imposed, and the constitutional rights he waived by entering guilty pleas. The circuit court confirmed that any mental health issues Lafayette had did not interfere with his ability to understand the proceedings, and it found that a sufficient factual basis existed in the records to support the conclusion that Lafayette committed the crimes charged. Although the court failed to inform Lafayette that it was not bound by the terms of the plea agreement, as required under ***State v. Hampton***, 2004 WI 107, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, Lafayette received the

benefit of the plea agreement. Therefore, this defect in the colloquy does not present a manifest injustice warranting plea withdrawal. *See* ***State v. Johnson***, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 441.

The circuit court also failed to advise Lafayette of the deportation consequences of his pleas, as mandated by WIS. STAT. § 971.08(1)(c). The records, however, indicate Lafayette is a United States citizen not subject to deportation. Any challenge to the pleas on this basis would therefore lack arguable merit. The records show the pleas were knowingly, voluntarily and intelligently made. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986).

The judgments of conviction reflect a total of $950 in DNA surcharges for three felony convictions and one misdemeanor conviction. *See* WIS. STAT. § 973.046(1r) (requiring circuit court to impose a $250 surcharge for each felony conviction and a $200 surcharge for each misdemeanor conviction). Because of the multiple DNA surcharges, we previously put these appeals on hold pending the Wisconsin Supreme Court's decision in ***State v. Odom***, No. 2015AP2525-CR, which was expected to address whether a defendant could withdraw a plea because the defendant was not advised at the time of his plea that multiple mandatory DNA surcharges would be assessed. Odom asserted the surcharge is punitive when assessed on a per-count basis against a defendant with multiple convictions and is, therefore, part of the "potential punishment" a circuit court must ensure a defendant understands. The ***Odom*** appeal, however, was voluntarily dismissed before oral argument.

These cases were then held for a decision in ***State v. Freiboth***, 2018 WI App 46, __ Wis. 2d __, __ N.W.2d __. In ***Freiboth***, we determined that a plea hearing court does not have a duty to inform the defendant about the mandatory DNA surcharge because the surcharge is not

punishment and is, therefore, not a direct consequence of the plea. ***Id.***, ¶12. In light of the holding in ***Freiboth***, there is no arguable merit to a claim for plea withdrawal based on the assessment of multiple mandatory DNA surcharges.

The records disclose no arguable basis for challenging the sentences imposed. Before imposing sentences authorized by law, the circuit court considered the seriousness of the offenses; Lafayette's character, including his "lengthy, ugly criminal history"; the need to protect the public; and the mitigating factors Lafayette raised. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. There is a presumption that Lafayette's sentences, which are well within the maximum allowed by law, are not unduly harsh or unconscionable, nor "so excessive and unusual" as to shock public sentiment. *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507; *see also* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Any claim that the circuit court erred by denying Lafayette's postconviction motion for resentencing based on his ineligibility for the substance abuse program would lack arguable merit. The decision whether Lafayette was eligible for the substance abuse program was discretionary. *See* WIS. STAT. § 973.01(3g). In his postconviction motion, Lafayette argued that although the sentencing court considered appropriate factors when imposing the sentences, the court's "abrupt and unexplained" decision to find Lafayette ineligible for the substance abuse program "based on his history" did not reflect a proper exercise of discretion. This court has held, however, that while the sentencing court must state whether a defendant is eligible or ineligible for earned release programs, the court is not required to make completely separate findings on the reasons for the eligibility decision, as long as the overall sentencing rationale

justifies that decision. *See* ***State v. Owens***, 2006 WI App 75, ¶9, 291 Wis. 2d 229, 713 N.W.2d 187. In imposing Lafayette's sentence, the circuit court recounted Lafayette's lengthy criminal history. The court was not required to repeat that history as its stated grounds for deeming Lafayette ineligible for the substance abuse program.

Our independent review of the records discloses no other potential issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that attorney Thomas J. Erickson is relieved of further representing Lafayette in these matters. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals