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DISTRICT II

September 12, 2018

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

2017AP421-CRNM State of Wisconsin v. Andre L. Epps, Jr. (L.C. # 2016CF563)

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).

Andre L. Epps, Jr., appeals from a judgment convicting him of several crimes. Epps' appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Epps received a copy of the report, was advised of

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

his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. WIS. STAT. RULE 809.21.

In June 2016, Epps pled no contest to (1) possession with intent to deliver between five and fifteen grams of cocaine as a second or subsequent offense; (2) maintaining a drug trafficking place as a second or subsequent offense; and (3) possession of a firearm by a felon as a repeater. Several additional charges were dismissed and read in.[2] The circuit court imposed an aggregate sentence of five years of initial confinement and five years of extended supervision. This no-merit appeal follows.

The no-merit report addresses whether Epps' no contest pleas were knowingly, voluntarily, and intelligently entered. The record shows that the circuit court engaged in a colloquy with Epps that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In addition, a signed plea questionnaire and waiver of rights form was entered into the record, along with an attachment detailing the elements of the offenses. We agree with counsel that a challenge to the entry of Epps' no contest pleas would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The record reveals that the court's sentencing decision had a "rational and explainable basis." *See* ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d

[2] The additional charges were (1) possession of THC as a second or subsequent offense; (2) obstructing an officer as a repeater; and (3) two counts of second-degree recklessly endangering safety as a repeater.

197 (citation omitted). In making its decision, the court considered the seriousness of the offenses, Epps' character, 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. Under the circumstances of the case, which were aggravated by Epps' criminal record, the sentence imposed does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Accordingly, we agree with counsel that a challenge to Epps' sentence would lack arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal.[3] 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 and relieve Attorney Megan Sanders-Drazen of further representation in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

[3] Three mandatory DNA surcharges were assessed on Epps' judgment of conviction. Because of the multiple DNA surcharges, we held this case in abeyance 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 the plea that multiple mandatory DNA surcharges would be assessed. The ***Odom*** appeal was voluntarily dismissed before oral argument. This case was then held for a decision in ***State v. Freiboth***, 2018 WI App 46, ___ Wis. 2d ___, ___ N.W.2d ___ (2015AP2535-CR). ***Freiboth*** holds 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 not a direct consequence of the plea. ***Id.***, ¶12. Consequently, there is no arguable merit to a claim for plea withdrawal based on the assessment of mandatory DNA surcharges.

IT IS FURTHER ORDERED that Attorney Megan Sanders-Drazen is relieved of further representation of Epps in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals