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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:

2017AP298-CRNM State of Wisconsin v. Eric L. Gordon (L.C. # 2015CF1303)
2017AP299-CRNM State of Wisconsin v. Eric L. Gordon (L.C. # 2015CF1636)

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).

In these consolidated cases, Eric L. Gordon appeals from judgments convicting him of two counts of manufacture/delivery of cocaine as second and subsequent offenses and one count of disorderly conduct as a repeater. Gordon's 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).[2] Gordon filed a response. After reviewing the records, counsel's report, and Gordon's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgments. WIS. STAT. RULE 809.21.

Gordon was convicted following pleas to two counts of manufacture/delivery of cocaine as second and subsequent offenses and one count of disorderly conduct as a repeater. The charges stemmed from his deliveries of cocaine to a confidential informant and an altercation with a fellow inmate in jail. Several additional charges were dismissed and read in.[3] The circuit court imposed a sentence of three years of initial confinement and two years of extended supervision. It also imposed and stayed a separate sentence of three years of initial confinement and three years of extended supervision, placing Gordon on three years of consecutive probation. Finally, it imposed a consecutive term of six months in jail. This no-merit appeal follows.

The no-merit report addresses whether Gordon's pleas were knowingly, voluntarily, and intelligently entered. The records show that the circuit court engaged in a colloquy with Gordon 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, signed plea questionnaire and waiver of rights forms were entered into the records, along with the relevant jury instructions

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

[2] The no-merit report was filed by attorney Kara L. Mele, who has been replaced by attorney Hannah Scheiber Jurss as Gordon's appellate counsel.

[3] The additional charges were manufacture/delivery of cocaine, possession of THC, and maintaining a drug trafficking place, all as second and subsequent offenses, and battery by a prisoner as a repeater.

detailing the elements of the offenses. We agree with counsel that a challenge to the entry of Gordon's pleas would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. The records reveal that the court's sentencing 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 considered the seriousness of the offenses, Gordon's character, and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. Under the circumstances of the cases, which were aggravated by Gordon's criminal history and read-in offenses, the court's sentencing decision does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper." ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with counsel that a challenge to it would lack arguable merit.

As noted, Gordon filed a response to counsel's no-merit report. In it, he expresses a desire to be found eligible for the Substance Abuse Program. He also complains that the circuit court placed too much weight on the seriousness of the offenses and the need to protect the public. We are not persuaded that Gordon's response presents an issue of arguable merit. To begin, the court reasonably found Gordon ineligible for the Substance Abuse Program due to the fact that he had participated in it before. Moreover, the weight to be given to each sentencing factor is within the discretion of the circuit court. ***Ziegler***, 289 Wis. 2d 594, ¶23.

Our independent review of the records does not disclose any potentially meritorious issue for appeal.[4] 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 Hannah Schieber Jurss of further representation in these matters.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Hannah Schieber Jurss is relieved of further representation of Gordon in these matters.

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

Sheila T. Reiff
Clerk of Court of Appeals

[4] Three mandatory DNA surcharges were assessed on Gordon's judgments of conviction. Because of the multiple DNA surcharges, we held the cases 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. The cases were 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.