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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 I/II

September 12, 2018

To:

Hon. Thomas R. Wolfgram
Reserve Judge

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Brian C. Hagner
Magner, Hueneke, Smith & Borda, LLP
4377 W. Loomis Road
Greenfield, WI 53220

Karen A. Loebel
Asst. District Attorney
821 W. State Street
Milwaukee, WI 53233

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

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

2016AP1073-CRNM State of Wisconsin v. Khrisshaun K. Jones (L.C. #2014CF5022)

Before Reilly, P.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).

Khrisshaun K. Jones appeals from a judgment of conviction entered upon his guilty pleas to theft from person and operating a motor vehicle without the owner's consent. Jones's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Jones received a copy of the report, was advised of

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

his right to file a response, and has elected not to do so. Upon consideration of the no-merit report and our independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, while in the victim's home, Jones attacked the victim with pepper spray and stole his car keys, car and cell phone. Jones was originally charged with armed robbery, a Class C felony, with a dangerous weapon enhancer. As part of a negotiated settlement, Jones pled guilty to a two-count amended information charging theft from a person, a Class G felony, and operating a vehicle without the owner's consent, a Class H felony. The State agreed to recommend prison of no specific length and Jones was free to argue sentence. On each count, the circuit court imposed a six-year bifurcated sentence, with three years of initial confinement followed by three years of extended supervision, to run concurrent with the other count.

The no-merit report addresses whether Jones's pleas were knowingly, voluntarily, and intelligently entered. During the plea hearing, the circuit court fulfilled each of the duties set forth in ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The record shows that the plea-taking court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1), ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Additionally, the circuit court properly relied upon the defendant's signed plea questionnaire. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). No issue of merit exists from the plea taking.

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." ***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 offense, Jones's 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. The court considered Jones's young age but determined that given the assaultive nature of the offense along with his prior juvenile record and recent release from juvenile corrections, probation would fail to adequately protect the public and would unduly depreciate the crime's severity. Given these circumstances, we cannot conclude that the aggregate six-year sentence when measured against the maximum sentence of sixteen years is so excessive or unusual as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There is no arguably meritorious challenge to the sentence imposed in this case.

Our independent review of the record reveals no other potential issues of arguable merit.[2] Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to further represent Jones in this appeal. Therefore,

[2] Two mandatory DNA surcharges were assessed on the judgment of conviction. Because of the multiple DNA surcharges, we previously put this appeal 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. 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 __. ***Freiboth*** holds that a plea-taking 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 ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Brian C. Hagner is relieved from further representing Khrisshaun K. Jones in this appeal. *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