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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:

2017AP2259-CRNM State of Wisconsin v. Daniel J. Brown (L.C. #2016CF329)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, 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).

Daniel J. Brown appeals from a judgment[1] convicting him of operating while intoxicated (7th offense) contrary to WIS. STAT. § 346.63(1)(a) and 346.65(2)(am)5. (2015-16).[2] Brown's

[1] We construe the notice of appeal as having been filed from the amended judgment of conviction entered on July 5, 2017. The amended judgment of conviction corrected an error relating to the term of extended supervision.

[2] 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). Brown 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 Brown's guilty plea was knowingly, voluntarily and intelligently entered; (2) whether any issues were preserved despite Brown's guilty plea; and (3) whether the circuit court misused its sentencing discretion. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of his guilty plea, Brown answered questions about the plea and his understanding of his constitutional rights during a colloquy with the circuit court that complied with ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. As part of the plea colloquy, the circuit court drew Brown's attention to the plea questionnaire and waiver of rights form Brown signed. The court confirmed that Brown read and understood the questionnaire and conferred with counsel about the contents of the questionnaire, pointed out the presence of the constitutional rights appearing on the front of the questionnaire and the elements of the offense attached to the questionnaire, confirmed that Brown read and understood those rights and elements and that Brown did not require further explanation from the court. *See* ***Hoppe***, 317 Wis. 2d 161, ¶¶30-32, 42 (although a plea questionnaire cannot be relied upon as a substitute for a substantive in-court personal colloquy, the questionnaire may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time the

plea is taken and the use of the questionnaire lessens the extent and degree of the requisite colloquy). The plea questionnaire form Brown 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). The record discloses that Brown'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, *see* ***State v. Harrington***, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994). Brown admitted his prior operating while intoxicated convictions. We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Brown's guilty plea.

We agree with appellate counsel that the record does not reflect any issue with arguable merit that survived Brown's guilty plea. *See* ***State v. Popp***, 2014 WI App 100, ¶13, 357 Wis. 2d 696, 855 N.W.2d 471.

With regard to the sentence, the record reveals that the sentencing court's discretionary decision had a "rational and explainable basis." *See* ***State v. Gallion***, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (citation omitted). The court adequately discussed the facts and factors relevant to sentencing Brown to a nine-year term (four years of initial confinement and five years of extended supervision). In fashioning the sentence, the court considered the seriousness of the offense, Brown's character and repeated operation of a motor vehicle while intoxicated, 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. The sentence complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence

of confinement and extended supervision. We agree with appellate counsel that there would be no arguable merit to a challenge to the sentence.

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 Gregory Bates of further representation of Brown 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 Gregory Bates is relieved of further representation of Daniel Brown in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals