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DISTRICT II

September 19, 2018

To:

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Treon D. Vaughn
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You are hereby notified that the Court has entered the following opinion and order:

2018AP756-CRNM State of Wisconsin v. Treon D. Vaughn (L.C. #2015CF763)

Before Reilly, P.J.[1]

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).

Treon D. Vaughn appeals from a judgment convicting him of two counts of violating a harassment restraining order. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Vaughn received a copy of

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

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

A former girlfriend obtained a harassment restraining order against Vaughn in January 2014 which was in effect until January 2018. In April 2015, Vaughn wrote the woman two letters. When she reported the violations of the restraining order, the woman also related two incidents in which Vaughn physically abused her. An amended complaint charged Vaughn with battery, disorderly conduct, criminal damage to property, battery as domestic abuse, disorderly conduct as domestic abuse, and two counts of violating a harassment restraining order. A competency evaluation was conducted and resulted in the opinion that Vaughn was competent to participate in the legal proceedings. Vaughn agreed with the competency finding. Vaughn entered a guilty plea to the two counts of violating a harassment restraining order. The prosecution agreed to dismiss the other charges and recommend a jail sentence with credit for time served. The sentencing court found that Vaughn was in custody 691 days. Vaughn was sentenced to concurrent jail terms of nine months with credit for time served. Vaughn served no additional days.[2]

The no-merit report addresses the potential issues of whether Vaughn's plea was knowingly, voluntarily, and intelligently entered and whether the sentence was the result of an

[2] At sentencing, the circuit court also vacated an earlier contempt finding against Vaughn because Vaughn had served enough time on the case.

erroneous exercise of discretion. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further.

The no-merit report fails to observe that during the plea colloquy the circuit court failed to advise Vaughn as required by ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14, "that the terms of a plea agreement, including a prosecutor's recommendations, are not binding on the court." ***Hampton*** requires that when a circuit court discovers that "the prosecuting attorney has agreed to seek charge or sentence concessions which must be approved by the court, *the court must advise the defendant personally that the recommendations of the prosecuting attorney are not binding on the court.*" ***Id.***, ¶32. This warning was, however, included in the plea questionnaire and waiver of rights form, which the court confirmed with Vaughn that he had read and signed. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (the court may rely on a plea questionnaire and waiver of rights form in assessing the defendant's knowledge about the consequences of the plea). Moreover, Vaughn was not affected by the defect in the plea colloquy. Any argument that Vaughn should be permitted to seek plea withdrawal under ***Hampton*** lacks arguable merit because the court followed the agreement by dismissing charges and giving Vaughn a time-served sentence. *See* ***State v. Johnson***, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 411 (no manifest injustice justifying plea withdrawal exists where the court failed to advise defendant but followed the plea agreement).

Any possible appellate issues from the proceedings before entry of the plea were forfeited by Vaughn's guilty plea. ***State v. Kelty***, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886; ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-

merit report, affirms the conviction and discharges appellate counsel of the obligation to represent Vaughn further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Becky Van Dam is relieved from further representing Treon D. Vaughn 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