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DISTRICT I

September 20, 2018

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

2016AP1960-CRNM State of Wisconsin v. Myron B. Wilson (L.C. # 2013CF3824)
2016AP1961-CRNM State of Wisconsin v. Myron B. Wilson (L.C. # 2013CF2580)

Before Kessler, P.J., Brennan and Dugan, 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).

Myron B. Wilson appeals judgments convicting him of two counts of possession of a firearm after being adjudicated delinquent and one count of possession of THC, as a second or subsequent offense. He also appeals an order partially denying his postconviction motion.

Attorney Russell J. A. Jones filed a no-merit report and a supplemental no-merit report, seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16),[1] and ***Anders v. California***, 386 U.S. 738, 744 (1967). Wilson did not respond. After considering the no-merit reports and conducting an independent review of the record, we conclude that there are no issues of arguable merit that Wilson could raise on appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

The no-merit report addresses whether there would be grounds for an appellate challenge to Wilson's plea. In order to ensure that a defendant is knowingly, intelligently, and voluntarily waiving the right to trial by entering a guilty plea, the circuit court must conduct a colloquy with the defendant to ascertain that the defendant understands the elements of the crimes to which he is pleading guilty, the constitutional rights he is waiving by entering the plea, and the maximum potential penalties that could be imposed. *See* WIS. STAT. § 971.08, and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The circuit court may also refer to a plea colloquy and waiver-of-rights form, which the defendant has acknowledged reviewing and understanding, as part of its inquiry, reducing "the extent and degree of the colloquy otherwise required between the [circuit] court and the defendant." ***State v. Hoppe***, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794 (citation and quotation marks omitted).

At the outset of the plea hearing, the circuit court questioned Wilson and Wilson's attorney at length about Wilson's mental illness and his ability to understand the proceedings. After the circuit court satisfied itself that Wilson had the ability to understand the proceedings,

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

the prosecutor stated the plea agreement on the record, and Wilson's attorney said the prosecutor's statement of the agreement was correct. The circuit court explained to Wilson what it meant that three charges were being dismissed and read-in. The circuit court explained the elements of the crimes to Wilson and informed him of the maximum penalties he faced by entering a plea. Wilson informed the court that he understood all of this information.

The circuit court ascertained that Wilson read the plea questionnaire and waiver-of-rights form, reviewed it with his attorney, understood the information on the form, and signed it. The circuit court discussed the constitutional rights Wilson was waiving by entering a plea, which were also listed on the plea questionnaire. The circuit court explained to Wilson that he was giving up the right to raise defenses to the charges, including those challenging actions by the police. The circuit court asked Wilson whether the facts alleged in the complaint could serve as the basis for the plea. Wilson's attorney agreed that the facts alleged in the complaint were accurate. Based on the circuit court's thorough plea colloquy with Wilson, and Wilson's review of the plea questionnaire and waiver-of-rights form, there would be no arguable merit to an appellate challenge to the plea.[2]

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its discretion when it sentenced Wilson to a total of seven years of initial confinement and six years of extended supervision. The circuit court considered Wilson's character, the need to protect the community, the severity of the crimes, and other factors

[2] The circuit court did not inform Wilson that if he was not a citizen of the United States of America, he could be deported if he pled guilty to the crime. *See* WIS. STAT. § 971.08(1)(c). However, this error appears to be harmless because there is no indication that Wilson is not a citizen.

pertinent to the sentence. The circuit court's decision is in accord with the law and was made based on the framework set forth in ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, there would be no arguable merit to an appellate challenge to the sentence.

The no-merit report also addresses whether there would be arguable merit to an appellate challenge to the circuit court's decision partially denying Wilson's postconviction motion. Wilson moved to vacate his conviction and withdraw his plea so that he could file a suppression motion. The circuit court denied Wilson's motion for postconviction relief because Wilson was informed prior to entering his plea that by choosing to enter a plea he would be giving up his right to challenge the actions of the police. *See* ***State v. Riekkoff***, 112 Wis. 2d 119, 123, 332 N.W.2d 744 (1983) (a guilty plea waives non-jurisdictional defects and defenses). There would be no arguable merit to this claim.

The supplemental no-merit report addresses whether there would be arguable merit to a challenge to the DNA surcharges imposed in this case. The circuit court initially imposed three DNA surcharges, one for each crime, totaling $750. Because multiple DNA surcharges were imposed, we previously put these appeals 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. These cases were then held for a decision in ***State v. Freiboth***, 2018 WI App 46, __ Wis. 2d __, __ N.W.2d __. ***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. Moreover, the

circuit court's postconviction order vacated two of the three DNA surcharges. Consequently, there would be no arguable merit to a challenge to the assessment of mandatory DNA surcharges.

Our independent review of the record also reveals no arguable basis for reversing the judgments of conviction and the order denying postconviction relief. Therefore, we affirm the judgments and order, and relieve Attorney Russell J. A. Jones of further representation of Wilson.[3]

IT IS ORDERED that the judgments and order of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Russell J. A. Jones is relieved of any further representation of Wilson in these matters. *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

[3] On August 3, 2018, Attorney Jones filed a supplemental no-merit report and motion to lift the stay imposed in this case. We have considered in the supplemental no-merit report in deciding this appeal and lift the stay.