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September 21, 2018

To:

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

2018AP581-CRNM State of Wisconsin v. Bobby Joe Henning (L.C. # 2017CF2195)

Before Kessler, 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).

Bobby Henning appeals a judgment convicting him of one count of misdemeanor battery and one count of misdemeanor disorderly conduct, both incidents of domestic abuse. Appointed appellate counsel, Sara Zwach, filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and

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

Anders v. California, 386 U.S. 738 (1967). Henning received a copy of the report and was advised of his right to file a response, but he has not responded. After considering the report and conducting an independent review of the record, we conclude that there are no arguably meritorious issues that could be raised on appeal.

The no-merit report first addresses whether there would be arguable merit to a claim that Henning's guilty plea was not knowingly, intelligently, and voluntarily entered. The circuit court conducted a colloquy that conformed to the strictures of WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), when read in conjunction with Henning's signed plea questionnaire and waiver of rights form. 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 rights he or she is waiving by entering a plea). 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 sentencing discretion when it imposed seven months in the jail for misdemeanor battery and three months in jail for disorderly conduct, to be served concurrently to each other, but consecutively to any other sentence. The record establishes that the circuit court carefully considered and applied the appropriate sentencing factors, addressing both aggravating and mitigating circumstances. See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712

² We note that the circuit court did not warn Henning that he would be subject to deportation if he pled guilty and was not a United States citizen. This warning was, however, included in the plea questionnaire and waiver of rights form, which Henning read and signed.

N.W.2d 76 (the court must identify the objectives of the sentence and the factors it considered in framing the sentence, and explain how those factors influenced its sentencing decision). There would be no arguable merit to a claim that the circuit court misused its sentencing discretion.

The no-merit report next addresses whether Henning should be given sentence credit from the date of his arrest on May 8, 2017, to the date of his sentencing on October 10, 2017. During this period of time, Henning was being held in jail on a probation revocation in an unrelated case. Where, as here, a sentence is imposed consecutively to another sentence the defendant is already serving, sentence credit may only be applied to the first sentence. *See State v. Boettcher*, 144 Wis. 2d 86, 423 N.W.2d 533 (1988). Henning was not entitled to any credit on his sentence for misdemeanor battery and disorderly conduct because he received credit against his sentence in the case on which he was revoked. There would be no arguable merit to a claim that Henning should have received sentence credit in this case.

Our review of the record discloses no other potential issues for appeal. Accordingly, we affirm the judgment of conviction and relieve Attorney Zwach of further representation of Henning.

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 Sarah Zwach is relieved from further representing Bobby Henning 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