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DISTRICT I

October 3, 2018

To:

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

2017AP10-CRNM State of Wisconsin v. Bobby Martir (L.C. # 2015CF5089)

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

Bobby Martir appeals a judgment convicting him of two counts of armed robbery, as a party to a crime. Appointed appellate counsel, Michael J. Backes, filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),[1] and ***Anders v. California***, 386 U.S. 738 (1967).

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

Martir 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 Martir'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 Martir'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.

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 a total of four years of initial confinement and four years of extended supervision. 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 N.W.2d 76 (the court must identify the objective of its sentence and the factors it considered, 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.

Finally, the no-merit report addresses whether there would be arguable merit to a claim that Martir's sentence should be modified. Counsel explains that he discussed this issue with

Martir but found no factual or legal basis for a sentence modification claim. Similarly, our review of the record reveals no basis for such a claim. Therefore, we conclude that there would be no arguable merit to a motion for sentence modification.

Our review of the record discloses no other potential issues for appeal.[2] Accordingly, we affirm the judgment of conviction and relieve Attorney Backes of further representation of Martir.

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

IT IS FURTHER ORDERED that Attorney Michael J. Backes is relieved from further representing Bobby Martir 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

[2] Two mandatory DNA surcharges were assessed on the judgment of conviction. 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 the 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 __, 916 N.W.2d 643. ***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. Consequently, there is no arguable merit to a claim for plea withdrawal based on the assessment of mandatory DNA surcharges.