



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I/II

October 17, 2018

To:

Hon. David A. Hansher
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

Hon. William S. Pocan
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St., Room 401
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State St.
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Sara Heinemann Roemaat
P.O. Box 280
Pewaukee, WI 53072

Jason D. Barnhill, #342735
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

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

2018AP178-CRNM State of Wisconsin v. Jason D. Barnhill (L.C. #2015CF3812)

Before Reilly, P.J., Gundrum and Hagedorn, 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).

Jason D. Barnhill appeals from a judgment convicting him of robbery of a financial institution and from an order denying his motion for postconviction relief. Appellate counsel has

filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16)¹ and *Anders v. California*, 386 U.S. 738 (1967). Barnhill was served with a copy of the report and has exercised his right to file a response. Appellate counsel addressed Barnhill's arguments in a supplemental report. Upon consideration of the no-merit report, the response, the supplemental report, and an independent review of the record as mandated by *Anders* and RULE 809.32, we conclude there are no issues with arguable merit for appeal and thus summarily affirm the judgment and order. *See* WIS. STAT. RULE 809.21.

While in custody for an armed robbery in Waukesha County, Barnhill confessed to police that he had robbed a Milwaukee County bank.² He entered a guilty plea to the Milwaukee County bank robbery. The circuit court sentenced him to eight years' initial confinement (IC) and four years' extended supervision (ES), concurrent with the identical sentence imposed in the Waukesha County case. The court found him eligible for both the Challenge Incarceration Program (CIP) and the Wisconsin Substance Abuse Program (SAP), but only after he served at least seven years' IC. Postconviction, Barnhill moved to be made eligible for the programs earlier in his sentence because he would be forty-one in seven years and would "age out" and no longer be eligible. *See* WIS. STAT. § 302.045(2)(b). The court denied his motion without a hearing.³ This no-merit appeal followed.

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

² Barnhill was charged in Waukesha County with robbery with threat of force, in violation of WIS. STAT. § 943.32(1)(b). The record indicates, however, that that offense also was a bank robbery. The Waukesha County offense is not before us.

³ The Honorable William S. Poca presided over Barnhill's plea and sentencing hearings; the Honorable David A. Hansher denied Barnhill's postconviction motion.

The no-merit report addresses the potential issues of whether Barnhill's guilty plea was freely, voluntarily, and knowingly entered and whether the sentence was unduly harsh or otherwise the result of an erroneous exercise of discretion. As our review of the record satisfies us that the no-merit report properly and thoroughly analyzes these issues as without merit, we address them no further.

Barnhill raises several points, none of which have arguable merit. For example, he notes that the assistant district attorney (ADA) said the two robberies were just days, rather than nearly a year, apart. The court did not rely on inaccurate information at sentencing because Barnhill himself corrected the misstatement before being sentenced.

Barnhill also argues that he does not have an "extensive" criminal record, as the ADA indicated. He has a lengthy history of charges that were dismissed and read in for sentencing, however, including driving a vehicle without the owner's consent, repeated sexual assault of the same child, bail jumping, and disorderly conduct, to name a few. A sentencing court may consider dismissed charges that are read in for purposes of sentencing, regardless of whether the defendant admits to the charges, *State v. Straszkowski*, 2008 WI 65, ¶58, 310 Wis. 2d 259, 750 N.W.2d 835, as read-ins may bear on a defendant's character.

Barnhill also complains that he was not given credit for testifying against his co-actor in the Waukesha County robbery. That case is not before us. What is relevant is that he was given credit for volunteering to police that he robbed the bank in Milwaukee County. The court also noted that the bank robbery was less aggravated than some others because he did not threaten the teller with harm, but repeatedly said "Just give me the money, I'm not gonna hurt anybody."

Barnhill asserts that the Written Explanation of Determinate Sentence does not state that he must serve at least seven years before being CIP-eligible. He is mistaken. A checkmark is in the box indicating that he is eligible for the Challenged Incarceration Program (“Boot Camp”). Handwritten after that is: “*But only eligible after serving at least 7 years of his IC time in this case.” Eligibility for the program is within the circuit court’s discretion. WIS. STAT. § 973.01(3m); *see also State v. Steele*, 2001 WI App 160, ¶8, 246 Wis. 2d 744, 632 N.W.2d 112. The transcript and judgment of conviction also clearly state that restriction.

Finally, Barnhill argues that the seven-year restriction likely will preclude him from participating in the programming the court ordered. The court has no control over the DOC’s administration of its programs. Further, the court fully explained its sentence. While it examined the necessary sentencing factors, it focused on the seriousness of the offense and its impact not only on the bank but even more so on the human victim. The sentence mirrored the parties’ joint recommendation and dovetailed exactly with the Waukesha County sentence, such that Barnhill will not serve any time on the Milwaukee County sentence beyond that which he will serve on the Waukesha County one. Ordering Barnhill to serve seven of his eight years’ IC before becoming eligible for a sentence-reduction program was within the court’s discretion. *See State v. Lehman*, 2004 WI App 59, ¶16, 270 Wis. 2d 695, 677 N.W.2d 644.

Our review of the record discloses no other potential issues for appeal. Barnhill’s guilty plea waived the right to raise nonjurisdictional defects and defenses arising from proceedings before entry of the plea, including claimed violations of constitutional rights. *State v. Kraemer*, 156 Wis. 2d 761, 765, 457 N.W.2d 562 (Ct. App. 1990). Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Barnhill further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction and order denying his motion for postconviction relief are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Sara Heinemann Roemaat is relieved from further representing Barnhill 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