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**DISTRICT IV**

January 15, 2019

*To*:

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

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2017AP2124-CRNM State of Wisconsin v. Jairus J. Brown (L.C. # 2016CF1784)
2017AP2125-CRNM State of Wisconsin v. Jairus J. Brown (L.C. # 2016CF2128)

Before Blanchard, Kloppenburg and Fitzpatrick, 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).**

Attorney Michael J. Herbert, appointed counsel for Jairus Brown, has filed no-merit reports seeking to withdraw as appellate counsel.[1] *See* WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738, 744 (1967). The no-merit reports address whether there would be arguable merit to a challenge to Brown's plea or sentencing. Brown was sent a copy of the reports but has not filed a response. After our review of the no-merit reports and the records, this court issued an order directing counsel to review whether there would be arguable merit to a claim for plea withdrawal because the elements of the offenses were not enumerated at the plea hearing or on the plea questionnaire.[2] Counsel then informed us that Brown does not wish to pursue this issue, regardless of its merits. Upon independently reviewing the entire record, as well as the no-merit reports and counsel's letter updates, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

In August 2016, Brown was charged with false imprisonment, felony intimidation of a witness, two counts of battery, and disorderly conduct by use of a dangerous weapon, all as a repeater and with the domestic abuse assessment. In October 2016, Brown was charged with possession of cocaine and possession of THC, both as a second or subsequent offense, and obstructing an officer, as a repeater. Pursuant to a plea agreement, Brown pled guilty to felony intimidation of a victim and one count of battery, both as a repeater and with the domestic abuse

[1] Because Brown's two criminal cases were resolved during joint plea and sentencing hearings, this court consolidated the appeals for disposition after counsel filed the no-merit reports. *See* WIS. STAT. RULE 809.10(3) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[2] Additionally, the order noted that the records appeared to be missing transcripts from hearings held on December 1, 2016, and March 16, 2017, and directed counsel to arrange for those transcripts to be prepared and filed. The court reporter has informed us that these cases were not called on the record on those dates, despite appearing on the circuit court docket entries. Accordingly, we vacate that portion of the order directing counsel to arrange for preparation of the additional transcripts.

assessment, and possession of THC as a second or subsequent offense. The circuit court sentenced Brown to a total of six and one-half years of initial confinement and five years of extended supervision.

First, the no-merit reports address whether there would be arguable merit to a challenge to Brown's plea. A post-sentencing motion for plea withdrawal must establish that plea withdrawal is necessary to correct a manifest injustice, such as a plea that was not knowing, intelligent, and voluntary. ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. Here, the circuit court conducted a plea colloquy that, together with the plea questionnaire that Brown signed, satisfied the court's mandatory duties to personally address Brown and determine information such as Brown's understanding of the range of punishments he faced, the constitutional rights he waived by entering a plea, and the direct consequences of the plea.[3] *See* ***State v. Hoppe***, 2009 WI 41, ¶¶18, 30, 317 Wis. 2d 161, 765 N.W.2d 794. There is no indication of any other basis for plea withdrawal. Accordingly, we agree with counsel's assessment that a challenge to Brown's plea would lack arguable merit.

[3] No-merit counsel notes that the circuit court failed to advise Brown as to the immigration consequences of his plea. Counsel states, however, that there is no basis for Brown to allege that he did not know or understand the information that should have been provided. *See* ***State v. Reyes Fuerte***, 2017 WI 104, ¶41, 378 Wis. 2d 504, 904 N.W.2d 773. We therefore agree with counsel that further proceedings on this basis would lack arguable merit.

As we have explained, this court issued a prior order directing counsel to review whether there would be arguable merit to a claim for plea withdrawal because the elements of the offenses were not enumerated during the plea colloquy or on the plea questionnaire. *See* ***State v. Brandt***, 226 Wis. 2d 610, 619, 594 N.W.2d 759 (1999) (providing that among the circuit court's plea colloquy duties is that the court "determine that the plea is made voluntarily with understanding of the nature of the charge," which includes "an awareness of the essential elements of the crime" (quoted source omitted)). No-merit counsel then informed this court that Brown does not wish to pursue this issue, regardless of its merit.

Next, the no-merit reports address whether a challenge to Brown's sentence would have arguable merit. Our review of a sentence determination begins "with the presumption that the trial court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in the record for the sentence complained of." ***State v. Krueger***, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984). Here, the circuit court explained that it considered facts pertinent to the standard sentencing factors and objectives, including Brown's character and criminal history, the seriousness of the offenses, and the need to protect the public. *See* ***State v. Gallion***, 2004 WI 42, ¶¶39-46 and n.11, 270 Wis. 2d 535, 678 N.W.2d 197. The court sentenced Brown to a total of six and one-half years of initial confinement and five years of extended supervision. The sentence was within the maximum Brown faced and, given the facts of this case, there would be no arguable merit to a claim that the sentence was unduly harsh or excessive. *See* ***State v. Stenzel***, 2004 WI App 181, ¶21, 276 Wis. 2d 224, 688 N.W.2d 20 (a sentence is unduly harsh or excessive "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances" (quoted source omitted)). We discern no erroneous exercise of the court's sentencing discretion.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Michael J. Herbert is relieved of any further representation of Jairus J. Brown in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*
*Clerk of Court of Appeals*