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DISTRICT II

April 24, 2019

To:

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

2018AP1840-CRNM	State of Wisconsin v. Sean M. Sanders (L.C. #2014CF1497)
2018AP1841-CRNM	State of Wisconsin v. Sean M. Sanders (L.C. #2015CF202)
2018AP1842-CRNM	State of Wisconsin v. Sean M. Sanders (L.C. #2015CF1139)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

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).

In these consolidated appeals, Sean Sanders appeals from judgments convicting him of strangulation and suffocation in an incident involving his girlfriend (with domestic abuse and repeater enhancers); second- or subsequent-offense possession of THC; and felony bail jumping and misdemeanor battery, both as a repeater. His notice of appeal states that he also appeals from an order denying his motion for postconviction relief, a matter we address below.

Appointed counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Sanders was served with a copy of the report but has not exercised his right to file a response. Our independent review of the record satisfies us that this case is appropriate for summary disposition, *see* WIS. STAT. RULE 809.21, and that there is no arguable merit to any issue that could be raised on appeal.

Sanders pled no contest to the strangulation/suffocation and misdemeanor battery charges and guilty to the THC and bail-jumping charges. Other charges were dismissed and read in at sentencing. A global plea agreement resolved the three cases. All told, the circuit court sentenced Sanders to six years' initial confinement followed by five years' extended supervision. Sanders was also ordered to pay $500 in DNA analysis surcharges for the felony bail jumping and the misdemeanor battery.[2] No surcharges were levied in regard to the other convictions.

Postconviction, Sanders moved to withdraw all of his pleas on grounds that he did not understand the full range of punishment he faced because the circuit court did not inform him that he faced mandatory DNA surcharges. *See* ***State v. Radaj***, 2015 WI App 50, ¶35, 363 Wis. 2d 633, 866 N.W.2d 758 (holding that multiple DNA surcharges have a punitive effect); *see*

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

[2] The felony bail jumping and misdemeanor battery judgments of conviction each reflect a $250 DNA analysis surcharge, for a total of $500.

A court imposing a sentence shall impose a DNA analysis surcharge of $250 for each felony conviction and $200 for each misdemeanor conviction. WIS. STAT. § 973.046(1r)(a), (b). The $250 DNA surcharge listed on the misdemeanor battery judgment of conviction thus should have been $200. We conclude the $250 surcharge was a clerical error. A clerical error may be corrected at any time. *See* ***State v. Prihoda***, 2000 WI 123, ¶17, 239 Wis. 2d 244, 618 N.W.2d 857. On remand, the circuit court either itself may correct the error in the judgment or direct the clerk's office to do so. ***Id.***, ¶5.

also WIS. STAT. § 971.08(1)(a) and ***State v. Bangert***, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986) (circuit court must ensure defendant understands full range of punishment).

After Sanders filed his motion, the state supreme court overruled ***Radaj***. ***State v. Williams***, 2018 WI 59, ¶29, 381 Wis. 2d 661, 912 N.W.2d 373. Shortly thereafter, this court held that plea-hearing courts do not have a duty to inform defendants about the mandatory DNA surcharge, as the surcharge is not punishment and therefore is not a direct consequence of a plea. ***State v. Freiboth***, 2018 WI App 46, ¶12, 383 Wis. 2d 733, 916 N.W.2d 643, *review denied*, 2018 WI 111, 384 Wis. 2d 465, 922 N.W.2d 293. The circuit court thus denied Sanders' motion. This no-merit appeal followed.

The no-merit report considers two potential issues: (1) whether Sanders' no-contest and guilty pleas were knowing, intelligent, and voluntary and (2) whether Sanders' sentence was a result of an erroneous exercise of discretion or was otherwise illegal. As our review of the record satisfies us that the no-merit report thoroughly analyzes these issues and properly concludes that they are without merit, we address them no further.

The no-merit notice of appeal states that Sanders is appealing the denial of his postconviction motion for plea withdrawal. The no-merit report correctly states, however, that "[t]here is no merit to any argument that the defendant['s] pleas should be withdrawn. Additionally, given the Wisconsin Supreme Court's ruling in ***State v. Freiboth***, [383 Wis. 2d 733] there is no merit to an argument that the circuit court erred in denying Mr. Sanders' postconviction motion." We agree. Any challenge to the order denying Sanders' postconviction motion would be frivolous.

Our review of the record discloses no other potential issues for appeal. Sander's guilty pleas waived the right to raise nonjurisdictional defects and defenses arising from proceedings before entry of the pleas, 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 Sanders further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Brian C. Hagner is relieved from further representing Sanders 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