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**DISTRICT I**

May 16, 2019

To:

Hon. Pedro Colon  
Circuit Court Judge  
821 W. State St.  
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Hon. M. Joseph Donald  
Circuit Court Judge  
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Oshkosh, WI 54903-3310

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

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2018AP1913-CRNM      State of Wisconsin v. Jason Robert Mayer (L.C. # 2014CF1818)

Before Kessler, P.J., Kloppenburg and Dugan, 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 Robert Mayer pled guilty on September 10, 2014, to two counts of armed robbery as a party to a crime. For each conviction, Mayer faced maximum penalties of a \$100,000 fine

and forty years of imprisonment. *See* WIS. STAT. §§ 943.32(2) (2013-14),<sup>1</sup> 939.05, 939.50(3)(c). The circuit court imposed two consecutive evenly bifurcated ten-year terms of imprisonment.<sup>2</sup>

Mayer, by Attorney Donna Odrzywolski, pursued a no-merit appeal in *State v. Mayer*, No. 2015AP1046-CRNM, but voluntarily dismissed that appeal and filed a postconviction motion for plea withdrawal on Mayer's behalf. In support, Mayer alleged that the circuit court accepted his guilty pleas without advising him about the mandatory DNA surcharges he would be required to pay if convicted of the crimes. The circuit court denied that motion and also denied a motion that Mayer filed *pro se* seeking to amend the judgment of conviction.<sup>3</sup> Mayer appeals.

Attorney Odrzywolski filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2017-18). Mayer did not file a response. Based upon our independent review of the no-merit report and the record, we conclude that no arguably meritorious issues exist for an appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2017-18).

According to an amended criminal complaint, two white males, one of whom was armed with a shotgun, robbed a Popeyes restaurant in Milwaukee County, Wisconsin, early in the morning of April 26, 2014. The next day, two white males, one armed with a shotgun, emerged

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

<sup>2</sup> The Honorable M. Joseph Donald accepted Mayer's guilty pleas, imposed sentence, and entered the judgment of conviction.

<sup>3</sup> The Honorable Pedro Colon presided over the postconviction proceedings and entered the orders denying postconviction relief.

from a red car, entered a Jimmy John's restaurant in Milwaukee County, and demanded money. A restaurant employee complied, giving the robbers the bags of money near the restaurant's safe.

Ten minutes after the Jimmy John's robbery, a police officer saw a red four-door Ford vehicle traveling with an unreadable rear license plate. The officer stopped the car, and the driver, subsequently identified as Rollin Paul Rydlewicz, immediately put his hands in the air. A man subsequently identified as Mayer was in the front passenger seat. Based on information that the officer received from a police dispatch report, the officer determined that Mayer was wearing the same clothing as was one of the men who had robbed the Jimmy John's restaurant moments earlier. On the back seat of the car, police found a bank deposit bag, currency in various denominations, and a loaded shotgun. Underneath the front passenger seat, police found a pair of gardening gloves and three bank deposit bags containing cash and deposit slips.

A Popeyes restaurant employee subsequently picked Rydlewicz from a photo array as one of the men who robbed the restaurant on April 26, 2014. Police review of surveillance video from the robbery led officers to conclude that Mayer was the second Popeyes restaurant robber. Police then questioned Mayer after giving him the warnings required by *Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966). Mayer admitted his participation in the Jimmy John's restaurant robbery, but stated that he did not remember robbing a Popeyes restaurant. He did, however, remember that someone gave him a firearm and that a voice told him to go into a store and take money.

The State charged Mayer with two counts of armed robbery as a party to a crime and one count of possessing a firearm while a felon. Mayer entered pleas of not guilty and not guilty by reason of mental disease or defect. A psychologist subsequently conducted a mental health

examination of Mayer and filed a report reflecting that Mayer’s “thoughts were well-organized and coherent” throughout the assessment process. The psychologist went on to conclude that, while Mayer’s history suggested a diagnosis of Unspecified Schizophrenia Spectrum and Other Psychotic Disorder, nothing supported a link between the mental disease and Mayer’s alleged criminal behavior. Accordingly, she determined that she was “unable to support Mr. Mayer’s special plea.”

After the psychologist filed her report, the parties appeared before the circuit court and advised that Mayer had decided to resolve the charges against him with a plea bargain. Specifically, Mayer would plead guilty to two counts of armed robbery as a party to a crime, and the State would request restitution and recommend that he be imprisoned without specifying the recommended period of imprisonment. The State would further move to dismiss and read in the charge of possessing a firearm as a felon. The circuit court accepted Mayer’s guilty pleas and the matters proceeded immediately to sentencing.

We first consider whether Mayer could pursue an arguably meritorious challenge to the validity of his guilty pleas. We agree with appellate counsel’s conclusion that he could not mount such a challenge. The circuit court conducted a thorough guilty plea colloquy that fully complied with the circuit court’s obligations when accepting a plea other than not guilty. *See* WIS. STAT. § 971.08, *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The circuit court did not advise Mayer that he would be required to pay mandatory DNA surcharges upon conviction but, as explained in the postconviction order, “plea hearing courts do not have a duty to inform defendants about the mandatory DNA surcharge[s].” *See State v. Freiboth*, 2018 WI App 46, ¶12, 383 Wis. 2d 733, 916 N.W.2d 643. In sum, the record—including the plea questionnaire

and waiver of rights form and addendum; the attached jury instructions describing the elements of the crime to which Mayer pled guilty; and the plea hearing transcript—demonstrates that Mayer entered his guilty pleas knowingly, intelligently, and voluntarily.<sup>4</sup>

We also agree with appellate counsel’s conclusion that the circuit court properly exercised its sentencing discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court identified appropriate sentencing objectives and discussed the sentencing factors that it viewed as relevant to achieving those objectives. *See id.*, ¶¶41-43. The sentences that the circuit court selected were well within the maximum sentences allowed by law and cannot be considered unduly harsh or unconscionable. *See State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507. Further discussion of this issue is also unwarranted.

We next conclude that Mayer cannot mount an arguably meritorious challenge to the circuit court’s findings that he is ineligible to participate in the challenge incarceration program (CIP) and the Wisconsin substance abuse program (WSAP). Both CIP and WSAP are prison programs offering substance abuse treatment. *See* WIS. STAT. §§ 302.045(1), 302.05(1)(am). When an inmate successfully completes either program, his or her remaining initial confinement time is converted to extended supervision time. *See* §§ 302.045(3m)(b), 302.05(3)(c)2. A circuit court exercises its discretion when determining a defendant’s eligibility for these programs, and we will sustain the circuit court’s conclusions if they are supported by the record and the overall

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<sup>4</sup> No basis exists to disturb Mayer’s decision to plead guilty and waive any potential defense based on a claim of mental illness. *Cf. State v. Francis*, 2005 WI App 161, ¶¶26-27, 285 Wis. 2d 451, 701 N.W.2d 632 (holding that a defendant who is apparently competent may implicitly withdraw a plea of not guilty by reason of mental disease or defect by entering a guilty plea).

sentencing rationale. *See State v. Owens*, 2006 WI App 75, ¶¶7-9, 291 Wis. 2d 229, 713 N.W.2d 187; WIS. STAT. § 973.01(3g)-(3m).<sup>5</sup>

Here, the circuit court fashioned Mayer's sentences in light of the primary sentencing factors, namely, the seriousness of the offenses, Mayer's character, and the need to protect the public, *see State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and the circuit court determined that the sentencing goals were community protection and punishment, *see Gallion*, 270 Wis. 2d 535, ¶41. The circuit court went on to find that the nature of Mayer's offenses and the extent of his mental health treatment needs, among other concerns, militated against his participation in CIP and WSAP. The sentencing rationale thus reflects that the circuit court found Mayer ineligible for CIP and WSAP because substance abuse treatment alone would not address his needs and because early release from confinement was unwarranted in light of the gravity of the crimes he had committed. The circuit court thus properly exercised its discretion in denying Mayer eligibility for CIP and WSAP. Indeed, gravity of the offense alone is a sufficient reason to exclude a defendant from prison treatment programs leading to early

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<sup>5</sup> The Wisconsin substance abuse program was formerly known as the earned release program. Effective August 3, 2011, the legislature renamed the program. *See* 2011 Wis. Act 38, § 19; WIS. STAT. § 991.11. The program is identified by both names in the 2013-14 version of the Wisconsin Statutes and in the current version. *See* WIS. STAT. §§ 302.05, 973.01(3g), 302.05 (2017-18), 973.01(3g) (2017-18).

release.<sup>6</sup> See *State v. Steele*, 2001 WI App 160, ¶11, 246 Wis. 2d 744, 632 N.W.2d 112. Further pursuit of this issue would lack arguable merit.

Appellate counsel does not discuss the circuit court's order that Mayer pay a total of \$559 in restitution, all to Popeyes restaurant. The record reflects that Mayer stipulated to restitution for Popeyes in that amount. See WIS. STAT. § 973.20(13)(c). As to Jimmy John's Restaurant, Mayer asked the circuit court to set restitution at zero because Jimmy John's was to receive the money found in the car with Mayer when he was arrested. The circuit court agreed, but told the State that if Jimmy John's sought additional restitution, the State could submit a request for the amounts claimed. See WIS. STAT. § 973.20(13)(c)1. The ninety-day period for the State to make such a request passed without action. Cf. *id.* Further proceedings regarding restitution therefore would lack arguable merit. See *State v. Leighton*, 2000 WI App 156, ¶56, 237 Wis. 2d 709, 616 N.W.2d 126 (defendant cannot appeal a restitution order to which he or she stipulated).

Appellate counsel also does not discuss the postconviction order denying Mayer's *pro se* motion to amend the judgment of conviction. Mayer asked the circuit court to order that he pay restitution as a condition of extended supervision rather than by deductions from his prison funds while confined. The circuit court correctly rejected the request. "Once the [circuit] court orders restitution, it is within the [Department of Corrections'] authority to collect it from an inmate." See *State v. Williams*, 2018 WI App 20, ¶7, 380 Wis. 2d 440, 909 N.W.2d 177. Moreover, "the

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<sup>6</sup> We note that the circuit court referenced Mayer's age as a reason to find Mayer ineligible for CIP. The basis for that reference is unclear. A person is statutorily disqualified from participation in CIP if the person has reached the age of forty before participation would begin. See WIS. STAT. § 302.045(2)(b). Mayer, however, was thirty-eight years old on the date of sentencing. Because the circuit court's overall sentencing rationale demonstrates that the circuit court properly exercised its discretion in finding Mayer ineligible for CIP, we do not further discuss the circuit court's reference to Mayer's age. Cf. *McCleary v. State*, 49 Wis. 2d 263, 282, 182 N.W.2d 512 (1971).

circuit court, acting as the sentencing court, lacks the competency to address an allegedly improper disbursement of funds by the DOC.” *Id.*, ¶4. Further pursuit of this issue would lack arguable merit.

Based on our independent review of the record, no other issues warrant discussion.<sup>7</sup> We conclude that any further proceedings in this matter would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32 (2017-18).

IT IS ORDERED that the judgment of conviction and postconviction orders are summarily affirmed. *See* WIS. STAT. RULE 809.21 (2017-18).

IT IS FURTHER ORDERED that Attorney Donna Odrzywolski is relieved of any further representation of Jason Robert Mayer on appeal. *See* WIS. STAT. RULE 809.32(3) (2017-18).

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*

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<sup>7</sup> We observe that the judgment of conviction—Form CR-212—appears to reflect that Mayer must pay a twenty-dollar fine although the circuit court did not impose a fine in any amount. We are aware, however, that Form CR-212 does not include a column to record the ten-dollar drug offender diversion surcharge mandated upon conviction of each property offense at issue here. *See* WIS. STAT. § 973.043(1). Because the record includes an assessment report—Form CCAP-154—that reflects two ten-dollar drug offender diversion surcharges and does not reflect a fine in any amount, this court is satisfied that Mayer cannot pursue an arguably meritorious challenge to the entry on the judgment of conviction reflecting a twenty-dollar fine.