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

May 28, 2019

To:

Hon. David M. Bastianelli
Circuit Court Judge
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Hon. Chad G. Kerkman
Circuit Court Judge, Br. 8
912 56th St.
Kenosha, WI 53140

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
912 56th Street
Kenosha, WI 53140

Michael D. Graveley
District Attorney
912 56th St.
Kenosha, WI 53140-3747

Leon W. Todd III
Assistant State Public Defender
735 N. Water St., Ste. 912
Milwaukee, WI 53202-4116

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

Ronald E. Wright 56195
Kettle Moraine Correctional Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2018AP149-CRNM State of Wisconsin v. Ronald E. Wright (L.C. # 2016CF45)

Before Kessler, P.J., Brash 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).

Ronald E. Wright appeals a judgment convicting him of one count of burglary of a building, as a repeater. He also appeals an order denying his motion for postconviction relief.

Attorney Leon W. Todd was appointed to represent Wright for postconviction and appellate proceedings. He filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18),[1] and ***Anders v. California***, 386 U.S. 738 (1967). Wright responded to the report. Attorney Todd then filed a supplemental no-merit report. After considering the reports and the response, and after conducting an independent review of the record, we conclude that there are no issues of arguable merit that could be raised on appeal. *See* WIS. STAT. RULE 809.21. Therefore, we affirm.

The no-merit report first addresses whether there would be arguable merit to a claim that Wright did not knowingly, intelligently, and voluntarily enter his guilty plea. The circuit court conducted a thorough colloquy with Wright that complied with WIS. STAT. § 971.08 and ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). In addition, Wright reviewed and signed a plea questionnaire and waiver of rights form with his counsel, which informed Wright of his constitutional rights, the nature of the crime, the maximum penalties, and other matters. *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). Therefore, there would be no arguable merit to an appellate challenge to his 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 sentenced Wright to eight years of initial confinement and five years of extended supervision. The record establishes that the circuit court carefully considered the general objectives of sentencing and applied the sentencing factors

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

based on the circumstances of this case. *See* ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (the court must identify the factors it considered and explain how those factors fit the objectives of the sentence and influenced its sentencing decision). The circuit court concluded that incarceration for a substantial period of time was necessary to protect the public because Wright had a very lengthy prior record and had been treated repeatedly for his drug addiction, but he continued to commit burglaries when he started using drugs again. The circuit court's sentencing decision was reasoned and reasonable. Therefore, there would be no arguable merit to a challenge to his sentence.

The no-merit report and Wright's response address whether Wright should be able to withdraw his plea because the circuit court did not advise him, and he was otherwise unaware, that he would be assessed a mandatory DNA surcharge of $250 as a result of his plea. In ***State v. Freiboth***, 2018 WI App 46, 383 Wis. 2d 733, 916 N.W.2d 643, we held that a plea hearing court does not have a duty to inform the defendant about a mandatory DNA surcharge because the surcharge is not punishment and is therefore 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 a mandatory DNA surcharge.[2]

[2] Wright's response also argues that Attorney Todd's argument regarding the DNA surcharge in the no-merit report is unpersuasive. Our conclusion that there is no arguable merit to the DNA issue is based on the recent decision in ***State v. Freiboth***, 2018 WI App 46, 383 Wis. 2d 733, 916 N.W.2d 643. Therefore, we do not address Attorney Todd's argument that the DNA surcharge was appropriate here due to the particular circumstances of this case.

In the response to the no-merit report, Wright contends that the presentence investigation report contained factual errors regarding his prior criminal history. In the supplemental no-merit report, Attorney Todd thoroughly addresses each of these claims of factual error, acknowledging that there are some factual inaccuracies, but explaining that the errors are either immaterial and/or harmless because Wright cannot show that the circuit court actually *relied* on the inaccurate information. *See* ***State v. Tiepelman***, 2006 WI 66, ¶2, 291 Wis. 2d 179, 717 N.W.2d 1 (a defendant must show that the information was inaccurate and the circuit court relied on the information). Therefore, there would be no arguable merit to a claim that Wright should be resentenced based on the factual errors in the presentence investigation report.

Our review of the record discloses no other potential issues for appeal. Accordingly, we affirm the judgment of conviction and the order denying postconviction relief. We also discharge appellate counsel of the obligation to represent Wright further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Leon W. Todd is relieved from further representing Ronald E. Wright 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