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DISTRICT I

May 28, 2019

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

2016AP2374-CRNM State of Wisconsin v. James Andrew Crump, Jr.
(L.C. # 2013CF5029)

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).

James Andrew Crump, Jr., appeals a judgment convicting him of felony intimidation of a witness with attempted use of force and two counts of misdemeanor battery, all three crimes as acts of domestic abuse. He also appeals an order partially denying his postconviction motion. Attorney Kiley Zellner filed a no-merit report seeking to withdraw as appellate counsel. *See*

WIS. STAT. RULE 809.32 (2017-18),[1] and ***Anders v. California***, 386 U.S. 738, 744 (1967). Crump was informed of his right to respond, but he did not do so. After considering the no-merit report and conducting an independent review of the record, we conclude that there are no issues of arguable merit that Crump could raise on appeal. Therefore, we summarily affirm the judgment of conviction and order partially denying postconviction relief. *See* WIS. STAT. RULE 809.21.[2]

The no-merit report first addresses whether there would be arguable merit to a claim that Crump received ineffective assistance of trial counsel. When Crump decided to enter his guilty plea, the jury trial had already begun. Although Crump did not file a response to the no-merit report, he submitted a letter to this court on February 15, 2017, in the early stages of this appeal, in which he asserted without elaboration that he received ineffective assistance of trial counsel. However, there would be no merit to a claim that Crump received ineffective assistance of counsel because a guilty plea waives all non-jurisdictional arguments and defenses, including constitutional claims. ***State v. Asmus***, 2010 WI App 48, ¶3, 324 Wis. 2d 427, 782 N.W.2d 435. Therefore, errors that may have occurred during the partially completed trial or plea proceedings, if any, cannot form a basis for an appellate challenge to his conviction.

The no-merit report addresses whether there would be any basis for arguing that Crump should be allowed to withdraw his guilty pleas. In order to ensure that a defendant is knowingly,

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

[2] This is the second no-merit appeal brought by counsel. The prior no-merit appeal was dismissed on June 21, 2016, and counsel was directed to file a postconviction motion addressing a DNA surcharge issue. The circuit court denied the motion.

intelligently, and voluntarily waiving the right to trial by entering a guilty plea, the circuit court must conduct a colloquy with a defendant to ascertain that the defendant understands the elements of the crimes to which he is pleading guilty, the constitutional rights he is waiving by entering the pleas, and the maximum potential penalties that could be imposed. *See* WIS. STAT. § 971.08; ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Based on the circuit court's thorough plea colloquy with Crump, which addressed all of the factors enumerated in § 971.08, we conclude that there would be no arguable merit to an appellate challenge to the pleas.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion. The circuit court sentenced Crump to nine years of imprisonment for the felony witness intimidation conviction, with four years of initial confinement and five years of extended supervision. The circuit court sentenced Crump to nine months in jail for each misdemeanor battery conviction, concurrent to each other, but consecutive to the sentence for felony witness intimidation. The circuit court considered the objectives of sentencing and applied the pertinent factors and circumstances of this case in accord with controlling law. The circuit court's sentencing decision comports with the framework set forth in ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, there would be no arguable merit to an appellate challenge to the sentence.

Finally, the no-merit report address whether there would be arguable merit to a challenge to the DNA surcharges imposed on Crump. The circuit court initially imposed a total of three surcharges on Crump for a total of $650, $200 for each of the misdemeanor convictions and $250 for the felony conviction. On remand, the circuit court vacated the two DNA surcharges imposed for the misdemeanors, but did not vacate the $250 charge imposed for the felony

conviction. The circuit court's decision not to vacate the $250 DNA surcharge imposed on the felony was proper pursuant to ***State v. Scruggs***, 2017 WI 15, ¶3, 373 Wis. 2d 312, 891 N.W.2d 786. Consequently, there is no arguable merit to an appellate challenge to the DNA surcharge.

Our independent review of the record reveals no arguable basis for an appeal. Therefore, we affirm the judgment of conviction and order partially denying postconviction relief, and relieve Attorney Kiley Zellner of further representation of Crump.

Upon the foregoing,

IT IS ORDERED that the judgment and order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Kiley Zellner is relieved of any further representation of Crump in these matters. *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