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

November 25, 2019

To:

Hon. Rebecca F. Dallet
Circuit Court Judge
Br. 40
821 W. State St.
Milwaukee, WI 53233

Hon. Michael J. Hanrahan
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Russell J. A. Jones
Jones Law Firm LLC
11414 W. Park Place, Suite 202
Milwaukee, WI 53224

Karen A. Loebel
Deputy District Attorney
821 W. State St.
Milwaukee, WI 53233

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

Darnell Jerome Young
5750 N. 91st St., Apt. 1
Milwaukee, WI 53209

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

2018AP1821-CRNM	State of Wisconsin v. Darnell Jerome Young (L.C. # 2014CF4670)
2018AP1822-CRNM	State of Wisconsin v. Darnell Jerome Young (L.C. # 2014CF5324)
2018AP1823-CRNM	State of Wisconsin v. Darnell Jerome Young (L.C. # 2013CM2598)
2018AP1824-CRNM	State of Wisconsin v. Darnell Jerome Young (L.C. # 2013CM2744)
2018AP1825-CRNM	State of Wisconsin v. Darnell Jerome Young (L.C. # 2014CM182)
2018AP1826-CRNM	State of Wisconsin v. Darnell Jerome Young (L.C. # 2014CM1716)

Before Brash, P.J., Kessler 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).

Darnell Jerome Young appeals six judgments of conviction entered after he pleaded guilty to eight misdemeanors and one felony. He also appeals orders denying postconviction relief.[1] His appellate counsel, Attorney Russell J.A. Jones, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32 (2017-18). Young did not file a response. Upon consideration of the no-merit report and an independent review of the records, we conclude that no arguably meritorious issue could be raised on appeal, and we therefore summarily affirm. *See* WIS. STAT. RULE 809.21 (2017-18).

In a series of criminal complaints filed over a fifteen-month period, the State alleged that from May 30, 2013, through October 26, 2014, Young committed numerous crimes arising out of his relationship with his wife and that he obstructed the investigation of some of those crimes.[2] Young elected to resolve all of the charges with a plea bargain. Pursuant to his agreement with the State, Young pleaded guilty to nine crimes:

> ● one misdemeanor count of criminal damage to property as an act of domestic abuse in case No. 2013CM2598, for which he faced maximum penalties of nine months in jail and a $10,000 fine, *see* WIS. STAT. §§ 943.01(1), 939.51(3)(a);
>
> ● two misdemeanor counts of disorderly conduct as acts of domestic abuse—one count each in case Nos. 2013CM2598 and

[1] The notices of no-merit appeal that Young filed in these matters did not expressly state that he appeals the adverse postconviction orders, but we construe the notices as sufficient to bring those orders before this court. *See* ***State v. Ascencio***, 92 Wis. 2d 822, 825, 285 N.W.2d 910 (Ct. App. 1979).

[2] The versions of the statutes in effect at the time of Young's crimes in this case were versions 2011-12 and 2013-14. The statutory provisions relating to Young's crimes and their maximum penalties were the same in both versions. For purposes of clarity, all subsequent references in this opinion are to the 2013-14 version unless otherwise noted.

2014CM182—for each of which he faced maximum penalties of ninety days in jail and a $1000 fine, *see* WIS. STAT. §§ 947.01(1), 939.51(3)(b);

- one misdemeanor count of disorderly conduct as an act of domestic abuse and as a repeat offender in case No. 2013CM2744, for which he faced a maximum penalty of two years of imprisonment and a $1000 fine, *see* WIS. STAT. §§ 947.01(1), 939.51(3)(b), and 939.62(1)(a);

- one misdemeanor count of obstructing an officer in case No. 2014CF4670, for which he faced maximum penalties of nine months in jail and a $10,000 fine, *see* WIS. STAT. §§ 946.41(1), 939.51(3)(a);

- two misdemeanor counts of battery as an act of domestic abuse—one count each in case Nos. 2014CM182 and 2014CM1716—for each of which of he faced maximum penalties of nine months in jail and a $10,000 fine, *see* WIS. STAT. §§ 940.19(1), 939.51(3)(a);

- one misdemeanor count of bail jumping as an act of domestic abuse in case No. 2014CM1716, for which he faced maximum penalties of nine months in jail and a $10,000 fine, *see* WIS. STAT. §§ 946.49(1)(a), 939.51(3)(a); and

- one felony count of intimidating a witness as an act of domestic abuse in case No. 2014CF5324, for which he faced maximum penalties of ten years of imprisonment and a $25,000 fine, *see* WIS. STAT. §§ 940.43(7), 939.50(3)(g).

The State agreed to dismiss ten additional counts charged in the complaints and to dismiss all of the charges filed in three other cases. Both the State and Young were free to argue for the dispositions each viewed as appropriate.

The matters proceeded to sentencing on January 20, 2015.[3] For each of the eight misdemeanor convictions, the circuit court imposed a concurrent maximum period of imprisonment, resulting in an aggregate term of one year of initial confinement and one year of extended supervision. For the felony conviction, the circuit court imposed a term of seven years and four months of imprisonment, bifurcated as three years and four months of initial confinement and four years of extended supervision, and the circuit court ordered Young to serve the sentence concurrently with the misdemeanor sentences.[4] The circuit court denied Young eligibility for the challenge incarceration program and the Wisconsin substance abuse program,

[3] The Honorable Rebecca F. Dallet imposed the sentences and entered the judgments of conviction.

[4] The judgment of conviction in felony case No. 2014CF5324 states that the sentence is consecutive to any other sentence. The records reflect that in February 2015, personnel from the Department of Corrections (DOC) therefore wrote to the circuit court in regard to the sentence credit awarded in that case. Specifically, the DOC questioned whether Young had received duplicate credit for his felony sentence, given that Young had received the same credit for his misdemeanor sentence for obstructing an officer in case No. 2014CF4670. In response, the circuit court entered an order clarifying that although "[t]he sentence in [case No.] 14CF5324 is consecutive," Young was entitled to credit in both cases because, according to the sentencing transcript, the sentences for the misdemeanor and the felony were concurrent. The circuit court further ordered entry of a modified judgment of conviction in misdemeanor case No. 2014CF4670, to reflect the sentence structure. Pursuant to the circuit court's order, the amended judgement in that misdemeanor matter now provides: "concurrent with 14CF5324."

Although the DOC inquiry led the circuit court to scrutinize the sentencing transcript in relation to only two of the six cases here, that transcript is equally clear that the circuit court ordered Young to serve all nine of his sentences concurrently. The circuit court explicitly stated that the award of "[sentence] credit goes toward all the counts because they are all running concurrent to each other." Accordingly, the same clarifying language included in the amended judgment of conviction entered in case No. 2014CF4670, is also required in the judgments of conviction in case Nos. 2013CM2598, 2013CM2744, 2014CM182, and 2014CM1716. Omission of that language is a clerical error. We therefore direct that upon remittitur, the circuit court shall oversee entry of an amended judgment of conviction in each of case Nos. 2013CM2598, 2013CM2744, 2014CM182, and 2014CM1716, stating that each sentence imposed in each of those misdemeanor matters is "concurrent with 14CF5324." *See* ***State v. Prihoda***, 2000 WI 123, ¶5, 239 Wis. 2d 244, 618 N.W.2d 857 (circuit court must correct clerical error in sentence portion of written judgment or direct clerk's office to make the correction).

imposed a DNA surcharge for each crime, and awarded him ninety-six days of sentence credit against each sentence.

Shortly after sentencing, the circuit court determined that it had awarded excessive sentence credit against the sentence for feloniously intimidating a witness because the award included credit for time Young spent in custody before he was charged with the offense. The circuit court therefore entered a postconviction order reducing the award of sentence credit in the felony matter, case No. 2014CF5324, to fifty-three days.

Young, by Attorney Russell J.A. Jones, pursued no-merit appeals in 2015, but voluntarily dismissed those appeals and filed a postconviction motion seeking: (1) plea withdrawal; (2) relief from the DNA surcharges imposed in the misdemeanor cases that arose in 2013; and (3) relief from the domestic abuse surcharge reflected on the judgment convicting him of resisting an officer. In support, Young 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 DNA surcharges imposed for misdemeanors he committed in 2013 constituted *ex post facto* punishment because, prior to January 1, 2014, a circuit court did not have statutory authority to impose a DNA surcharge in connection with a misdemeanor conviction; and the domestic abuse surcharge included on the judgment convicting him of obstructing an officer was a clerical error.

The circuit court vacated the domestic abuse surcharge imposed for obstructing an officer and denied plea withdrawal. As to the DNA surcharges, the circuit court initially vacated them but later reconsidered on the court's own motion and denied relief.[5] Young appeals.

We first consider whether Young 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 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 Young that he would be required to pay mandatory DNA surcharges upon conviction but, as explained in the postconviction orders, "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 records—including the plea questionnaire and waiver of rights forms and addenda; the attached documents describing the elements of the crimes to which Young pled guilty; and the plea hearing transcript—demonstrate that Young entered his guilty pleas knowingly, intelligently, and voluntarily. Further discussion of this issue is unwarranted.

[5] The Honorable Janet Protasiewicz entered the postconviction orders vacating the DNA surcharges and the domestic abuse surcharge. The Honorable Michael J. Hanrahan entered the orders reinstating the DNA surcharges and denying the motion for plea withdrawal.

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. Moreover, the sentences did not exceed the maximum sentences allowed by law, and the aggregate sentence he received amounted to far less than the aggregate maximum term that he faced upon conviction. Under these circumstances, Young cannot mount an arguably meritorious claim that his sentences are so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Further discussion of this issue is also unwarranted.

We next consider whether Young can pursue an arguably meritorious claim that the circuit court erroneously found him ineligible to participate in the challenge incarceration program and the Wisconsin substance abuse program. An inmate who is incarcerated in connection with a crime specified in WIS. STAT. ch. 940 is statutorily disqualified from participation in either program. *See* WIS. STAT. §§ 302.045(2)(c), 302.05(3)(a)1. Because Young's concurrent sentences include two terms imposed for battery under WIS. STAT. § 940.19(1) and a term imposed for intimidation of a witness under WIS. STAT. § 940.43(7), Young could not be admitted to either of the programs. Further pursuit of this issue would lack arguable merit.

We next consider whether Young can pursue an arguably meritorious challenge to the circuit court's conclusion that he must pay the DNA surcharges imposed for the misdemeanor

convictions. While postconviction proceedings were pending in these matters, the supreme court determined that, pursuant to WIS. STAT. § 973.046, courts sentencing defendants after January 1, 2014, are required to impose a mandatory $200 DNA surcharge for each misdemeanor conviction. *See* ***State v. Williams***, 2018 WI 59, ¶26, 381 Wis. 2d 661, 912 N.W.2d 373. Further, the supreme court determined that the surcharges cannot be waived. *See* ***State v. Cox***, 2018 WI 67, ¶1, 382 Wis. 2d 338, 913 N.W.2d 780. Accordingly, no arguably meritorious basis exists to challenge any of the $200 DNA surcharges.

Last, we consider whether Young could pursue an arguably meritorious challenge to the circuit court's postconviction order that modified the award of ninety-six days of presentence credit granted at sentencing against the term of imprisonment imposed for feloniously intimidating a witness. Prompted by a post-sentencing inquiry from the DOC, the circuit court modified the original award in that matter to fifty-three days. Young filed a motion *pro se* requesting reconsideration, which the circuit court denied. A further challenge to the order modifying Young's sentence credit would lack arguable merit.

The circuit court found that police took Young into custody on October 16, 2014. He remained in custody thereafter, unable to post bail. On November 28, 2014, the State charged Young with feloniously intimidating a witness while he was in custody on October 26, 2014. On January 20, 2015, the circuit court sentenced him for the crime. In light of the foregoing timeline, the circuit court concluded in postconviction proceedings that Young was entitled to credit against his sentence for felonious intimidation for only the fifty-three days he spent in custody after he was charged with that crime on November 28, 2014. Young sought

reconsideration on the ground that he should receive credit for his time in custody from the date that he committed the crime, October 26, 2014, until he was sentenced on January 20, 2015, a total of eighty-six days. The circuit court correctly denied Young's reconsideration motion. A person is entitled to sentence credit only for time in custody "in connection with" the offense of conviction, *see* WIS. STAT. § 973.155, and a "factual connection" must exist between the presentence custody and the sentence. *See* ***State v. Johnson***, 2009 WI 57, ¶66, 318 Wis. 2d 21, 767 N.W.2d 207. The record here reflects that the State did not begin investigating the alleged witness intimidation until November 2014 and did not bring any charge related to witness intimidation until November 28, 2014. Thus, up until that date, Young was in custody based entirely on conduct preceding the intimidation charge. He was therefore entitled to credit against his felony sentence for his time in custody only from November 28, 2014, until the date of sentencing, a total of fifty-three days. *See* ***State v. Johnson***, 2007 WI 107, ¶9, 304 Wis. 2d 318, 735 N.W.2d 505.

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32 (2017-18).

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

IT IS FURTHER ORDERED that appellate counsel, Attorney Russell J.A. Jones, is relieved of any further representation of Darnell Jerome Young on appeal effective on the date that the circuit court enters modified judgments of conviction in Milwaukee County case

Nos. 2013CM2598, 2013CM2744, 2014CM182, and 2014CM1716, as required by footnote four of this opinion. *See* WIS. STAT. RULE 809.32(3) (2017-18).

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

Sheila T. Reiff
Clerk of Court of Appeals