



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

January 6, 2020

To:

Hon. Pedro Colon
Circuit Court Judge
821 W. State St.
Milwaukee, WI 53233

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

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

Christopher D. Sobic
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

Wayman D. Haywood 428705
Racine Correctional Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2018AP1492-CRNM State of Wisconsin v. Wayman D. Haywood (L.C. # 2016CF122)

Before Brash, P.J., Kessler 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).

Wayman D. Haywood appeals from a judgment convicting him of four counts of theft, four counts of criminal damage to property, one count of felony retail theft, one count of conspiracy to commit burglary, and one count of possession of burglarious tools. Haywood also appeals the order denying his motion for postconviction relief. His appellate counsel, Assistant

State Public Defender Christopher D. Sobiechowski, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18) and *Anders v. California*, 386 U.S. 738 (1967).¹ Haywood received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment and order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

As summed up by the circuit court, Haywood “was charged in this case with a dizzying number of property-related offenses, all occurring within a short time frame between November 25, 2015 and January 6, 2016—**17** counts to be exact.” The charges included ten felonies and seven misdemeanors. Haywood subsequently pled guilty to eleven counts, consisting of five felonies and six misdemeanors.

The circuit court imposed a global sentence of four years of initial confinement and four years of extended supervision. The circuit court additionally made Haywood eligible for the Challenge Incarceration Program after three years of initial confinement.

In a postconviction motion, Haywood asked the circuit court to amend the judgment of conviction to also make him eligible for the Substance Abuse Program. In its decision and order denying the motion, the circuit court expressly found Haywood ineligible after concluding that substance abuse was not the motivation for his behavior. *See State v. Owens*, 2006 WI App 75, ¶¶7-9, 291 Wis. 2d 229, 713 N.W.2d 187 (holding that a circuit court exercises its discretion when determining a defendant’s eligibility for the Substance Abuse Program, formerly known as

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

the Earned Release Program, and the Challenge Incarceration Program); *see also State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994) (explaining that when a defendant challenges a sentence, the postconviction proceedings afford the circuit court an additional opportunity to explain its sentencing rationale).

The no-merit report addresses the potential issues of whether Haywood’s pleas were knowingly, voluntarily, and intelligently entered and whether the sentence was the result of an erroneous exercise of discretion. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit and we discuss them further only to briefly elaborate on points that the no-merit report does not address.

First, we note that the circuit court incorrectly informed Haywood of the bifurcated sentence he faced on the charge of conspiracy to commit burglary, a Class F felony. During the plea hearing, the circuit court properly stated the maximum penalties as a \$25,000 fine, twelve years and six months in prison, or both.² *See* WIS. STAT. § 939.50(3)(f). The circuit court then went on to state that “six and a half of those years can be confinement[,] six years can be extended supervision.”

In actuality, the term of confinement for a Class F felony is seven years and six months, and the term of extended supervision may not exceed five years. *See* WIS. STAT. § 973.01(2)(b)6m., (d)4. However, in light of the record before us, we conclude that a challenge to the validity of the plea based on this isolated misstatement by the circuit court would lack

² The maximum penalties were also properly set forth in the amended information and plea questionnaire form.

arguable merit.³ See *State v. Lichty*, 2012 WI App 126, ¶¶12, 14, 344 Wis. 2d 733, 823 N.W.2d 830 (describing as “relatively minor” a legal error regarding the maximum amounts of confinement and extended supervision permitted by the statute and concluding that, in any event, the mistake was not a violation of WIS. STAT. § 971.08 or *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986)); see also *State v. Cross*, 2010 WI 70, ¶32, 326 Wis. 2d 492, 786 N.W.2d 64 (“requiring an evidentiary hearing for every small deviation from the circuit court’s duties during a plea colloquy is simply not necessary for the protection of a defendant’s constitutional rights” because to do otherwise “would result in the abjuring of a defendant’s representations in open court [during a plea hearing] for insubstantial defects”).

Second, Haywood’s valid pleas operated to waive all nonjurisdictional defects and defenses—including any claims he might want to raise as to the circuit court’s denial of his multiple requests to have his bail reduced or the handling of his speedy trial requests. See *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Haywood further in this appeal.

Upon the foregoing, therefore,

³ In exchange for Haywood’s guilty pleas to five felonies and six misdemeanors, the State recommended that the circuit court impose a global sentence of six years of initial confinement and five years of extended supervision. As previously stated, the circuit court instead imposed a global sentence of four years of initial confinement and four years of extended supervision and additionally made Haywood eligible for the Challenge Incarceration Program after three years of initial confinement.

IT IS ORDERED that the judgment of conviction and the order denying postconviction relief are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Assistant State Public Defender Christopher D. Sobic is relieved of further representation of Haywood in this matter. *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