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DISTRICT I

January 22, 2020

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

2018AP1530-CRNM State of Wisconsin v. Shawn T. Holliman (L.C. # 2014CF4141)

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).

Shawn T. Holliman appeals from a judgment of conviction for one count of armed robbery as a party to a crime. *See* WIS. STAT. §§ 943.32(2), 939.05 (2013-14).¹ He also appeals the order denying his postconviction motion.² Holliman’s appellate counsel, Assistant State Public Defender Kaitlin A. Lamb, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Holliman received a copy of the report, was advised of his right to file a response, and has elected not to do so. We have independently reviewed the record and the no-merit report as mandated by *Anders*, and we conclude that there are no issues of arguable merit that could be pursued on appeal. We, therefore, summarily affirm. *See* WIS. STAT. RULE 809.21.

The complaint alleged that Holliman participated in an armed robbery on August 18, 2014. On that date, according to the complaint, A.C. came to Milwaukee in response to a Craigslist ad:

[A.C.] stated that the ad on Craigslist was advertising that an individual named “Jason” was selling a vehicle, and provided a contact number [A.C.] stated that he called the number to set up a meeting, and he and “Jason” agreed to meet at ... a Taco Bell[] to have him inspect the car.

[A.C.]’s sister, [S.C.], was also interviewed by the police. She stated that she went with her brother to inspect the vehicle. She indicated that they retrieved \$3500.00 from the bank and drove to the Taco Bell in a silver Honda. She stated that when they arrived, the vehicle they were travelling in was surrounded by a group of approximately 6 people. She stated that they were ordered out of the front seats of the vehicle and into the back seats. Three of the subjects got into the vehicle with the victims and

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

² The Honorable William S. Pocan presided over the plea proceedings and sentenced Holliman. The Honorable David A. Hansher issued the order denying Holliman’s postconviction motion.

began driving away. [S.C.] indicated that she started crying, and one of the subjects pointed a silver and black firearm at her brother[’s] head and stated “if she doesn’t shut up, I’m going to shoot you.”

[S.C.] explained to the police that ... the subjects [subsequently] ordered them out of the vehicle. The subject with the firearm fired a single shot into the air, and the subjects then fled with the victims’ car.... Police were able to retrieve a single .40 caliber shell casing from the area [S.C.] described.

The complaint further alleged that police interviewed Holliman, who said:

he was aware there was going to be a robbery at the Taco Bell. He stated that he was the driver of the victims’ vehicle and that he was given \$100.00 for his participation after his mother told him that the other actors were not his friends if they did not give him proceeds from the armed robbery.[³]

Holliman was charged with one count of armed robbery as a party to a crime. He entered into a plea agreement with the State pursuant to which he agreed to plead guilty and the State agreed to recommend fourteen years of imprisonment comprised of seven years of initial confinement and seven years of extended supervision consecutive to a revocation sentence that Holliman was serving. The State additionally agreed that it would not charge Holliman with false imprisonment, and the agreement left Holliman free to argue as to the length of his sentence.

The circuit court conducted a plea colloquy with Holliman, accepted his guilty plea, and found him guilty. At sentencing, which immediately followed the plea proceeding, the State adhered to the terms of the plea agreement in recommending that Holliman serve seven years of initial confinement and seven years of extended supervision. Holliman’s trial counsel urged the

³ At sentencing, the defense disputed the context of this remark.

circuit court to sentence Holliman to three years of initial confinement and five or six years of extended supervision to run concurrent to the revocation sentence he was serving.

The circuit court followed the State's recommendation and sentenced Holliman to seven years of initial confinement and seven years of extended supervision to run consecutive to Holliman's revocation sentence. The circuit court made Holliman eligible for both the Challenge Incarceration Program and the Substance Abuse Program, but only after he served at least six years of initial confinement in the underlying case. Additionally, the circuit court made Holliman jointly and severally liable for \$5788 in restitution to which Holliman had stipulated.

Appellate counsel previously pursued a no-merit appeal on Holliman's behalf. *See State v. Holliman*, No. 2016AP1811-CRNM. Following its initial review, this court concluded that a supplemental report was necessary to address whether there was any arguable merit to challenge the imposition of the DNA surcharge. We indicated that alternatively, if appellate counsel identified an issue of merit, she could move to dismiss the appeal and extend the time for filing a postconviction motion.

Appellate counsel subsequently moved to dismiss the no-merit report and extend the time for filing a postconviction motion. We granted her request.

In the postconviction motion that followed, Holliman argued that he was entitled to plea withdrawal because the circuit court failed to advise him of the mandatory \$250 DNA surcharge during the plea colloquy. Alternatively, Holliman asked the postconviction court to waive the DNA surcharge.

The postconviction court held Holliman's motion in abeyance pending the Wisconsin Supreme Court's resolution of two cases presenting the same issues: *State v. Odom*, No. 2015AP2525-CR, unpublished certification (WI App Nov. 9, 2016), and *State v. Cox*, 2018 WI 67, 382 Wis. 2d 338, 913 N.W.2d 780. Our supreme court's decision in *Cox* subsequently foreclosed Holliman's request that the postconviction court waive the DNA surcharge. *See id.*, 382 Wis. 2d 338, ¶1 (holding that circuit courts do not have discretion to waive the DNA surcharge). Meanwhile, the parties in *Odom* voluntarily dismissed that appeal. However, the same issue was presented in *State v. Freiboth*, 2018 WI App 46, 383 Wis. 2d 733, 916 N.W.2d 643; therefore, the postconviction court held Holliman's motion for plea withdrawal in abeyance pending a decision in that case.

Freiboth held that the mandatory DNA surcharge does not constitute punishment and consequently, the circuit court does not have a duty to inform a defendant of the DNA surcharge before accepting a guilty or no-contest plea. *See id.*, ¶12. As a result, the postconviction court denied Holliman's motion to withdraw his guilty plea.

In the present no-merit appeal, appellate counsel analyzes two issues: (1) whether Holliman's guilty plea was knowingly, voluntarily, and intelligently entered; and (2) whether the circuit court erroneously exercised its sentencing discretion. Appellate counsel additionally discusses why a challenge to the \$250 DNA surcharge is without merit. This court is satisfied that appellate counsel properly analyzed the issues raised in the no-merit report as without merit and will not discuss them further.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment of conviction and the postconviction

order, and discharges appellate counsel of the obligation to represent Holliman 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 Kaitlin A. Lamb is relieved from further representing Shawn T. Holliman 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