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**DISTRICT II**

March 4, 2020

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

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2018AP1119-CRNM      State of Wisconsin v. Bradley N. Sprague (L.C. #2017CF412)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

**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).**

Bradley N. Sprague appeals from a judgment convicting him of possession of narcotics as a repeat offender contrary to WIS. STAT. § 961.41(3g)(am) (2017-18)<sup>1</sup> and from an order denying his request to waive the DNA surcharge and to delay payment of his court costs and surcharges

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

until he is released to extended supervision. Sprague's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Sprague received a copy of the report and has filed a response to it. We required appellate counsel to file two supplemental no-merit reports addressing sentence credit. Upon consideration of the no-merit reports, Sprague's response, and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment and the order because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21.

We first address Sprague's response to counsel's no-merit report. Sprague argues that he should receive additional sentence credit, and he requested new appointed appellate counsel to file a sentence modification motion. Our October 15, 2019 order required Sprague to advise this court whether he desired to discharge counsel and proceed *pro se*. Sprague never responded to this order. In addition, the court is advised that the State Public Defender denied Sprague's request for new counsel. Therefore, appointed appellate counsel remains of record in this appeal.

The no-merit report addresses the following possible appellate issues: (1) whether Sprague's guilty plea was knowingly, voluntarily and intelligently entered; and (2) whether the circuit court misused its sentencing discretion.<sup>2</sup>

After reviewing the record, we conclude that counsel's no-merit report properly analyzes these issues and correctly concludes that these issues are without arguable merit. The plea colloquy complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794.

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<sup>2</sup> Although the notice of appeal lists the circuit court order denying postconviction relief, counsel's no-merit report does not discuss the circuit court's ruling relating to the DNA surcharge and denying Sprague's request to defer paying his court costs.

The colloquy was thorough and informed Sprague of each of the constitutional rights waived by his plea. The circuit court also engaged in a proper exercise of sentencing discretion. Sprague's guilty plea waived all nonjurisdictional defects and defenses. *State v. Popp*, 2014 WI App 100, ¶13, 357 Wis. 2d 696, 855 N.W.2d 471.

The circuit court sentenced Sprague to a four-year term (two years of initial confinement<sup>3</sup> and two years of extended supervision) consecutive to then current sentences. The circuit court engaged in a proper exercise of sentencing discretion after considering various sentencing factors. *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197 (we review the sentence for a misuse of discretion); *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76 (sentencing factors discussed). The circuit court deemed Sprague eligible for the Substance Abuse Program.

The supplemental no-merit reports address sentence credit. In a response, Sprague argues that because the offense in this case was similar to the cases in which his extended supervision was revoked, he should receive sentence credit in this case (or dual credit).

It is undisputed that before he was sentenced in this case, Sprague began serving his sentence after revocation in two other cases.<sup>4</sup> It is also undisputed that in this case, the circuit court imposed a sentence consecutive to Sprague's sentence after revocation. Credit in relation to consecutive sentences is allowed only on one sentence; dual credit is not allowed. *State v. Boettcher*, 144 Wis. 2d 86, 100, 423 N.W.2d 533 (1988). The materials provided by appellate

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<sup>3</sup> Sprague's term of initial confinement was enhanced because he was a repeat offender.

<sup>4</sup> Sprague's extended supervision was revoked in Dodge County Circuit Court case Nos. 2008CF382 and 2008CF420.

counsel demonstrate that after Sprague was sentenced in this case on September 28, 2017, the Department of Corrections applied sentence credit against his revocation sentence for all days in custody since his arrest in this case on March 16, 2017. Therefore, no sentence credit is due on the consecutive sentence imposed in the case before us.

The circuit court properly denied Sprague's motion to waive the DNA surcharge. The circuit court did not have discretion to waive the DNA surcharge. *State v. Cox*, 2018 WI 67, ¶24, 382 Wis. 2d 338, 913 N.W.2d 780. The circuit court also properly declined to defer payment of Sprague's court and other costs until after he is released from custody. The court properly noted that the Department of Corrections has authority to disburse funds received by Sprague for enumerated purposes, including various costs imposed at sentencing. WIS. STAT. § 301.32(1).

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit reports, affirm the judgment of conviction and circuit court order, and relieve Attorney Gregory Bates of further representation of Sprague in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of further representation of Bradley N. Sprague in this matter.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*