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DISTRICT II

April 22, 2020

To:

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

2019AP327-CRNM State of Wisconsin v. Billy Trevino (L.C. #2017CF776)

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).

Billy Trevino appeals from a judgment convicting him of operating a motor vehicle while intoxicated (5th offense) contrary to WIS. STAT. § 346.63(1)(a) (2015-16).¹ Trevino's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18) and *Anders v.*

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

California, 386 U.S. 738 (1967). Trevino received a copy of the report and was advised of his right to file a response. He has not done so. Upon consideration of the report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgment because there are no issues that would have arguable merit for appeal. WIS. STAT. RULE 809.21 (2017-18).

The circuit court sentenced Trevino to a three and one-half year term (eighteen months of initial confinement and two years of extended supervision). Trevino received sentence credit and was deemed eligible for the Substance Abuse Program.

The no-merit report addresses the following possible appellate issues: (1) whether Trevino’s guilty plea was knowingly, voluntarily and intelligently entered; (2) whether the circuit court misused its sentencing discretion; and (3) whether Trevino’s prior suspension of his driver’s license in Texas due to an alcohol-related arrest constitutes a prior offense for purposes of his Wisconsin conviction for a fifth offense of operating while intoxicated. After reviewing the record, we conclude that counsel’s no-merit report properly analyzes these issues and correctly determines that these issues lack arguable merit.

The plea colloquy complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794.² The colloquy was thorough and informed Trevino of each of the constitutional rights waived by his plea. “[A] guilty plea waives all nonjurisdictional defects and defenses.” *State v. Popp*, 2014 WI App 100, ¶13, 357 Wis. 2d 696, 855 N.W.2d 471 (citation omitted).

² Our review of the record reveals that during the plea colloquy the circuit court did not give the deportation warning set out in WIS. STAT. § 971.08(1)(c). Counsel’s no-merit report recognizes this defect. Nevertheless, no issue with arguable merit for appeal is present because the presentence investigation report indicates that Trevino was born in the United States.

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 parties stipulated that, in this case, Trevino was facing a charge of operating while intoxicated as a fifth offense as a result of prior alcohol-related offenses or suspensions in Texas. We agree with appellate counsel's analysis that *State v. Jackson*, 2014 WI App 50, 354 Wis. 2d 99, 851 N.W.2d 465, applies. As a result, Trevino's prior driver's license suspension in Texas due to an alcohol-related arrest constituted a prior offense for purposes of his Wisconsin conviction for a fifth offense of operating while intoxicated.

In addition to the issues discussed above, we have independently reviewed the record. Our independent review of the record did not disclose any arguably 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 report, affirm the judgment of conviction, and relieve Attorney Becky Van Dam of further representation of Trevino in this matter.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is affirmed pursuant to WIS. STAT. RULE 809.21 (2017-18).

IT IS FURTHER ORDERED that Attorney Becky Van Dam is relieved of further representation of Billy Trevino in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals