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DISTRICT I

August 24, 2021

To:

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Circuit Court Judge
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Clerk of Circuit Court
Milwaukee County
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You are hereby notified that the Court has entered the following opinion and order:

2019AP1211-CRNM State v. John Washington, Jr. (L.C. # 2018CM1469)

Before Donald, P.J.[1]

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).

John Washington, Jr. appeals the judgment convicting him of obstructing an officer contrary to WIS. STAT. § 946.41(1) (2017-18). Attorney Becky Nicole Van Dam has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Washington received a copy of the report and filed a response. Upon consideration of the no-merit report, Washington's response, and an independent review of the record as mandated by

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Anders, we conclude that the judgment 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.

The State filed a criminal complaint charging Washington with two misdemeanors, obstructing an officer and battery, stemming from incidents that occurred in September 2017. The complaint alleged that V.W., who previously dated Washington, reported to police that Washington slapped her while she was at a car wash. When the police attempted to arrest Washington related to the incident and for a violation of probation, they heard a door slam at the residence. An officer then called the probation department to check on Washington's GPS location and was told that a tamper alert had just been received, which meant that Washington had either attempted to or had removed his monitoring bracelet.

After repeated knocks, an individual came to the door, said he had secured the dogs that were inside the residence, and allowed the officers to enter. The officers asked to search the bathroom where the dogs were located and found Washington inside. From that point on, Washington actively resisted arrest and, at one point, tried to escape through a window.

In exchange for Washington's guilty plea to obstructing an officer, the State amended the misdemeanor battery charge to a disorderly conduct violation. *See* MILWAUKEE CODE OF ORDINANCES § 63.01. Pursuant to the plea negotiations, the State agreed to recommend six months in jail on count one, obstructing an officer, concurrent to any other sentence, but left the

matter of the forfeiture amount for the disorderly conduct violation to the circuit court's discretion.[2]

The circuit court accepted Washington's plea and sentenced him to six months in jail on the charge of obstructing an officer, concurrent with the revocation sentence Washington was serving at the time, and two days in jail on the disorderly conduct violation.[3] The Department of Corrections (DOC) subsequently requested that the circuit court review the two-day jail sentence imposed for the disorderly conduct violation. The DOC explained that it did not appear that Washington's jail sentence on the charge was appropriate.

Thereafter, the circuit court amended the judgment to remove the two-day jail sentence. The circuit court additionally amended the judgment to include six months of sentence credit in order to effectuate a time-served disposition on the charge of obstructing an officer. This appeal follows.

The no-merit report addresses the potential issues of whether Washington's plea was knowingly, intelligently, and voluntarily entered and whether the sentence was the result of an

[2] MILWAUKEE CODE OF ORDINANCES § 63.01 provides:

> Any person violating the provision of this section of the Code shall, for each offense, forfeit a penalty not to exceed two hundred fifty dollars ($250.00); the cash deposit thereof shall be one hundred dollars ($100.00) and the penalty assessment shall be fifteen dollars ($15.00), and in default of payments thereof, shall be imprisoned in the county jail or the house of correction of the county for a period not to exceed ninety (90) days in the discretion of the court.

[3] While the judgment of conviction reflects that the circuit court sentenced Washington to two days on the disorderly conduct violation, this is not reflected in the circuit court's comments during the combined plea and sentencing hearing.

erroneous exercise of discretion or otherwise improper. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit. We further discuss Washington's plea only insofar as it relates to an issue he raised in his response.

Washington claims in his response to the no-merit report that he thought he was pleading no-contest to the charge of obstructing an officer. Washington contends that he feared for his safety and thought the police were going to shoot him, which prompted him to hide in the bathroom. According to Washington, his fear was based in part on the fact that the same police department previously shot his nephew.

Washington references an ongoing conflict between the police and his family prior to his arrest in this case and asserts that he asked his trial attorneys "to gather any complaints and all documented police presence at both his mother[']s home that's a few blocks from his sister[']s home where he was taken into custody to prove his thought process at the time of all of these events." If this information had been brought to light, Washington suggests the result would have been an additional disorderly conduct violation as opposed to a misdemeanor conviction for obstructing an officer. In his no-merit response, he asks that his plea be modified to a no-contest plea and the obstruction charge be reduced "to a 90[-]day disorderly conduct charge time served."

First, the plea hearing transcript—where Washington repeatedly made clear that he was pleading guilty—belies his contention that he thought he was pleading no-contest to the

obstruction charge.[4] Second, in order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective in a manner that resulted in the defendant actually entering an unknowing plea, or demonstrate some other manifest injustice, such as coercion, the lack of a factual basis to support the charge, ineffective assistance of counsel, or failure by the prosecutor to fulfill the plea agreement. *See* ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); ***State v. Krieger***, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). There is no indication of any such defect here.

Washington entered his plea pursuant to a negotiated plea agreement that was presented in open court. The circuit court conducted a thorough plea colloquy, inquiring into Washington's ability to understand the proceedings and the voluntariness of his plea decision, and further exploring Washington's understanding of the nature of the charge, the penalty range, and the constitutional rights being waived. *See* WIS. STAT. § 971.08; ***State v. Hoppe***, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794.

Insofar as Washington now suggests that trial counsel was ineffective for not doing more to investigate the circumstances that prompted him to react the way that he did and speculates that this would have resulted in a reduced charge, this is insufficient to support a claim of ineffective assistance of counsel. *See* ***State v. Erickson***, 227 Wis. 2d 758, 774, 596 N.W.2d 749 (1999) (explaining that speculation is insufficient to satisfy the prejudice prong of an ineffective assistance of counsel claim, which requires both deficient performance and prejudice). Even if

[4] This court notes, however, that the Plea Questionnaire and Waiver of Rights form does appear to have both "Guilty" and "No Contest" marked. However, during the plea hearing, Washington repeatedly and unequivocally made clear that he was pleading guilty to the obstruction charge. Washington later pled no-contest to the disorderly conduct violation, even though that is a non-criminal violation. *See* WIS. STAT. § 939.12 ("Conduct punishable only by a forfeiture is not a crime.").

the rationale Washington offers for his behavior is true, it does not follow that the result would have been an additional disorderly conduct violation as opposed to a misdemeanor conviction. There would be no arguable merit to pursuing plea withdrawal on this basis.

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

Upon the foregoing, therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Becky Nicole Van Dam is relieved of further representation of Washington 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