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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 II

March 2, 2022

To:

Hon. Maria S. Lazar
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County
Electronic Notice

Susan Lee Opper
Electronic Notice

Mark A. Schoenfeldt
Electronic Notice

Winn S. Collins
Electronic Notice

Dang Vue, #669319
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2020AP1668-CRNM State of Wisconsin v. Dang Vue (L.C. #2017CF1712)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Dang Vue appeals from a judgment convicting him of three counts of forgery-uttering contrary to WIS. STAT. § 943.38(2) (2017-18) and one count of identity theft contrary to § 943.203(2)(a) (2017-18). Vue's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Vue received a copy of the report and was advised of his right to file a response. He has not done so. Upon

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

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.

The no-merit report addresses the following possible appellate issues: (1) whether Vue's no contest pleas were knowingly, voluntarily and intelligently entered and had a factual basis; (2) whether the circuit court misused its sentencing discretion; and (3) whether trial counsel was effective. 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. A "no contest plea waives all nonjurisdictional defects and defenses." *State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. Any challenge to the entry of Vue's no contest pleas would lack arguable merit for appeal.

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 objectives and factors discussed). The record shows that Vue received sentence credit.

The no-merit report addresses whether Vue received effective assistance from his trial counsel. We normally decline to address claims of ineffective assistance of trial counsel if the issue was not raised by a postconviction motion in the circuit court. *State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979). However, because appointed counsel asks to be discharged from the duty of representation, we must determine whether such a claim would

have sufficient merit to require appointed counsel to file a postconviction motion and request a *Machner* hearing.

The no-merit report does not relate any specific complaint about trial counsel's performance, and Vue has not responded to the no-merit report to state any such claim. The complaint indicates that Vue made inculpatory statements to police about the forgery and when police searched his wallet as part of an effort to identify him, police found evidence that he had committed identity theft. Nothing before this court suggests that there would be arguable merit to a claim that trial counsel was ineffective for not challenging the statement and the search such that Vue could meet the requirements for plea withdrawal under *State v. Villegas*, 2018 WI App 9, ¶¶47-48, 380 Wis. 2d 246, 908 N.W.2d 198.

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 Mark Schoenfeldt of further representation of Vue in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Mark A. Schoenfeldt is relieved of further representation of Dang Vue in this matter.

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

Sheila T. Reiff
Clerk of Court of Appeals