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DISTRICT I

November 15, 2022

To:

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Clerk of Circuit Court
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Mario Marques Pearson 511535
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You are hereby notified that the Court has entered the following opinion and order:

2021AP1701-CRNM State of Wisconsin v. Mario Marques Pearson
(L.C. # 2019CF3316)

Before Donald, P.J., Dugan and White, 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).

Mario Marques Pearson appeals a judgment of conviction entered upon his guilty plea to first-degree reckless injury. Appellate counsel, Attorney George Tauscheck, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2019-20).[1] We granted Pearson's request for an extension of time to respond to the no-merit report, but he did not file a response. Upon consideration of the no-merit report and an

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

independent review of the record as mandated by ***Anders***, we conclude that no arguably meritorious issues exist for an appeal. Therefore, we summarily affirm. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint in this case—Milwaukee County Circuit Court case No. 2019CF3316—police responded to the 1800 block of North Fairmount Avenue in Milwaukee on July 22, 2019, following reports of a shooting. Officers found M.E.J. on the ground with a gunshot wound to his back. M.E.J. told the police that Pearson had produced a gun while the two men were arguing over a ten dollar debt, and that M.E.J. was trying to flee when he was shot. The complaint further alleged that at the time of the shooting, Pearson was facing a felony charge of second-degree recklessly endangering safety in Milwaukee County Circuit Court case No. 2019CF274, and that he was out of custody on bond with conditions that he not possess any firearms or commit any new crimes. Based on the foregoing, the State charged Pearson with first-degree reckless injury with the use of a dangerous weapon and felony bail jumping.

Pursuant to a plea agreement, Pearson agreed to plead guilty in this case to an amended charge of first-degree reckless injury, and the State agreed to seek a prison sentence without specifying a recommended term of imprisonment. The State also agreed to move for dismissal of the charge that Pearson committed the crime while using a dangerous weapon. Additionally, the State agreed to move to dismiss and read in the charges of felony bail jumping in the instant case and of second-degree recklessly endangering safety in Milwaukee County Circuit Court case No. 2019CF274. The circuit court accepted Pearson's guilty plea to first-degree reckless injury and granted the State's motions regarding the other charges.

At sentencing, Pearson faced a maximum penalty of twenty-five years of imprisonment and a $100,000 fine. *See* WIS. STAT. §§ 940.23(1)(a), 939.50(3)(d). The circuit court imposed a twelve-year term of imprisonment bifurcated as eight years of initial confinement and four years of extended supervision. The circuit court awarded Pearson the 417 days of credit that he requested for his time in custody prior to sentencing, and the circuit court did not impose any restitution. He appeals.

The no-merit report addresses the potential issues of whether Pearson entered his guilty plea knowingly, intelligently, and voluntarily, and whether the circuit court properly exercised its sentencing discretion. This court is satisfied that appellate counsel properly analyzed these issues, and we agree with appellate counsel that they lack arguable merit. As to the issues that appellate counsel considered, only a brief additional discussion is warranted regarding an aspect of the plea proceeding.

Specifically, due to precautions necessitated by the COVID-19 pandemic, Pearson did not sign the guilty plea questionnaire and waiver of rights form that his trial counsel signed and filed at the time of the plea hearing.[2] His trial counsel explained to the circuit court that counsel had read the form aloud to Pearson during a meeting via Zoom the previous day. Pearson confirmed during the plea hearing that he had reviewed the form with his trial counsel and that he would have signed it if he had been able to meet with his trial counsel in person. Pearson further assured the circuit court that his trial counsel had "explained everything on the form" and that he had no questions about it. Moreover, and most importantly, a plea questionnaire and

[2] The no-merit report indicates that Pearson also signed the form.

waiver of rights form is not an essential component of the plea procedure but rather is a tool that the circuit court may use in conducting a plea colloquy. *See* ***State v. Hoppe***, 2009 WI 41, ¶30, 317 Wis. 2d 161, 765 N.W.2d 794. In this case, our review of the record confirms appellate counsel's assessment that the plea colloquy satisfied the circuit court's obligations when accepting a guilty plea. Accordingly, the absence of a signature on the form does not provide an arguably meritorious basis for further postconviction or appellate proceedings.

We have independently considered whether Pearson could pursue an arguably meritorious challenge to the circuit court's finding that he was competent to proceed. "No person who lacks substantial mental capacity to understand the proceedings or assist in his or her defense may be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures." ***State v. Byrge***, 2000 WI 101, ¶28, 237 Wis. 2d 197, 614 N.W.2d 477 (citation omitted). Pearson's trial counsel raised the question of Pearson's competency after the charges in this case had been pending for several months, advising that Pearson was complaining that he was hearing voices. The circuit court ordered an inpatient examination at Mendota Mental Health Institute (MMHI) after an outpatient examination yielded inconclusive results. Dr. Ana Garcia, the psychologist who examined Pearson at MMHI filed a report concluding that Pearson was competent to proceed and that he was malingering. Pearson disputed the findings, and the circuit court conducted a hearing at which Dr. Garcia was the only witness.

Dr. Garcia testified that Pearson functioned well in the hospital unit at MMHI. He exhibited good memory and good problem-solving skills when engaging in card games with his peers. He demonstrated the ability to read a television news feed and to recount information about the news reports. He also was able to read the MMHI unit rules aloud, review them with staff, ask clarifying questions, and then follow the rules to advance in his security level at the

institution. Although Pearson claimed to be hallucinating, he did not exhibit any objective indicators that he was experiencing symptoms of mental illness. Dr. Garcia went on to testify that the tests she administered showed that Pearson was feigning both a mental health disorder and a lack of legal knowledge. She concluded that Pearson did not lack substantial capacity to understand court procedures or to assist in his defense. Based on the psychologist's evaluation, the circuit court found that Pearson was competent to proceed.

To determine legal competency, the circuit court must consider a defendant's mental capacity to understand and assist at the time of the proceedings. *See* ***id.***, ¶31. We will not reverse a circuit court's competency determination unless it was clearly erroneous. *See* ***id.***, ¶46. In light of the evidence presented and the standard of review, further pursuit of this issue would be frivolous within the meaning of ***Anders***.

Finally, we have independently considered the documents that Pearson submitted to the circuit court on his own behalf in the weeks preceding his guilty plea. In those submissions, Pearson indicated that he had been denied a speedy trial, and he sought to compel production of the victim's medical records. He also suggested that the circuit court did not make a timely determination of probable cause following his arrest. Further pursuit of these claims would be frivolous within the meaning of ***Anders***. A defendant who enters a knowing, intelligent, and voluntary guilty plea gives up such nonjurisdictional challenges. *See* ***State v. Kelty***, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886; *see also* ***Foster v. State***, 70 Wis. 2d 12, 19-20, 233 N.W.2d 411 (1975) (holding that a guilty plea waives the claim that the defendant was denied a speedy trial); ***State v. Beyer***, 2021 WI 59, ¶21, 397 Wis. 2d 616, 960 N.W.2d 408 (holding that a guilty plea waives discovery issues); ***State v. Aniton***, 183 Wis. 2d 125, 128-29,

515 N.W.2d 302 (Ct. App. 1994) (holding that a guilty plea waives the claim of an untimely probable cause determination).

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney George Tauscheck is relieved of any further representation of Mario Marques Pearson. *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