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DISTRICT II

January 9, 2013

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

2012AP1802-CRNM	State of Wisconsin v. Arquincy L. Carr (L.C. #2010CF857)
2012AP1803-CRNM	State of Wisconsin v. Arquincy L. Carr (L.C. #2011CF172)
2012AP1804-CRNM	State of Wisconsin v. Arquincy L. Carr (L.C. #2011CF480)
2012AP1805-CRNM	State of Wisconsin v. Arquincy L. Carr (L.C. #2011CF728)

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

Arquincy Carr appeals from judgments of conviction entered on his guilty pleas for misdemeanor battery, strangulation, felony intimidation of a witness, and two counts of assault

by a prisoner throwing or expelling bodily substances, all as a repeat offender.[1] Carr's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Carr received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the records, we conclude that the judgments 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.

With respect to conduct directed at his former girlfriend on two separate occasions, Carr was charged with misdemeanor battery, aggravated battery, felony intimidation of a victim, strangulation, and criminal damage to property, all as a repeat offender.[2] While those charges were pending, Carr was charged as a repeater with felony intimidation of a victim and two counts of threats to a witness based on two letters he sent to his former girlfriend from jail. Subsequently, Carr was charged in two additional cases as a repeater with four counts of assault by a prisoner, attempted assault by a prisoner, and two counts of battery by a prisoner for conduct that occurred on several separate dates in the county jail.

[1] The convictions for battery, strangulation, and intimidation of a witness are also enhanced as acts of domestic abuse under WIS. STAT. § 968.075(1)(a) (2009-10).

All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

[2] The charges described are those made in the criminal informations.

The cases were consolidated and a plea agreement reached. Carr pled guilty to the five charges of which he is convicted, and the other counts in these cases and two other cases were dismissed as read ins. The prosecution agreed to be silent at sentencing with respect to the length of prison sentences.

Carr was sentenced to a total of eight years' initial confinement and six years' extended supervision on the battery, strangulation, and felony intimidation of a witness convictions. On the assault by a prisoner convictions, concurrent terms of four years' initial confinement and three years' extended supervision were imposed but stayed in favor of three years' probation, to be served consecutive to the sentences on the battery, strangulation, and felony intimidation of a witness convictions. Carr's postconviction motion to correct the no-contact provision in the judgment of conviction to conform to the oral pronouncement was granted.

The no-merit report addresses the potential issues of whether Carr's plea was freely, voluntarily, and knowingly entered; whether the sentence was the result of an erroneous exercise of discretion; whether the sentence can be challenged as unduly harsh or based on inaccurate information; and whether any new factors exist for sentence modification. This court is satisfied

that the no-merit report properly analyzes the issues it raises as without merit and this court will not discuss them further.[3]

Our review of the record discloses no other potential issues for appeal.[4] Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Carr further in these appeals.

[3] The no-merit report asserts that the record demonstrates that Carr agreed that the prosecution could prove he was a repeat offender. However, the record citation for that proposition only reflects that Carr understood that the prosecution had the burden to prove he was a repeat offender and it does not reflect his admission of the repeater allegation. Carr was not specifically asked during the plea about the predicate offense and the dates that he was in and out of prison on his prior conviction. *See* ***State v. Goldstein***, 182 Wis. 2d 251, 261, 513 N.W.2d 631 (Ct. App. 1994) (highlighting that a simple and direct question to the defendant during the plea colloquy can satisfy the requirement in WIS. STAT. § 973.12(1) that the prior conviction be "admitted by the defendant or proved by the state"). We are satisfied that the record demonstrates Carr's admission and proof of being a repeat offender. During the plea colloquy, the maximum penalty of each crime was set forth and then Carr was told the maximum because of the repeat offender enhancer. He was aware of the repeat offender allegation and never challenged its application. Three of the four criminal complaints set forth Carr's 1997 arson conviction and the dates on which he was in and out of prison reflecting that each of the charged offenses occurred within five years of the prior felony conviction. Carr personally stipulated to the use of facts set forth in the complaints as a basis for his conviction. The complaints, as admitted by Carr, stand as proof of the prior conviction and incarceration periods. *See* ***State v. Holan***, No. 2011AP1717-CR, unpublished slip op. ¶16 (WI App Jan. 31, 2012) (***Holan*** is properly cited for persuasive value under WIS. STAT. RULE 809.23(3)(b)). Additionally, the presentence investigation report (PSI) set forth Carr's arson conviction and the dates he was in and out of prison on that conviction. No corrections to the PSI were made at sentencing and it also provides proof of Carr's status as a repeat offender. *See* ***State v. Caldwell***, 154 Wis. 2d 683, 694, 454 N.W.2d 13 (Ct. App. 1990). Finally, Carr admitted during allocution at sentencing that he was convicted of arson in 1997. There is no arguable merit to a claim that the proof requirement of § 973.12(1) was not complied with.

[4] Prior to entry of his guilty pleas, Carr was subject to a competency evaluation and found competent to proceed. The charges relating to Carr's former girlfriend were also consolidated for purposes of trial over Carr's objection. Any possible appellate issues from these rulings are waived because a defendant's guilty plea waives the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Susan E. Alesia is relieved from further representing Arquincy Carr in these appeals. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals