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May 8, 2013

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

2012AP1142-CRNM State of Wisconsin v. Anthawn S. Williams (L.C. # 2010CF216)

Before Brown, C.J., Reilly and Gundrum, JJ.

Anthawn Williams appeals from a judgment convicting him of maintaining a drug trafficking place contrary to WIS. STAT. § 961.42(1) (2009-10)¹ and possession of heroin with intent to deliver contrary to WIS. STAT. § 961.41(1m)(d)1, both as party to the crime. Williams'

¹ All subsequent references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

appellate counsel² has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12), and *Anders v. California*, 386 U.S. 738 (1967). Williams received a copy of the report and has not filed a response to it. 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 (2011-12).

The no-merit report addresses the following possible appellate issues: (1) whether Williams' guilty pleas were knowingly, voluntarily and intelligently entered and had a factual basis; (2) whether the circuit court misused its sentencing discretion; (3) whether the circuit court erroneously denied Williams' motion to suppress; and (4) whether trial counsel was ineffective for not litigating the identity of the confidential informant. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of the guilty pleas, Williams answered questions about the pleas and his understanding of his constitutional rights during a colloquy with the circuit court that complied with *State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794. The record discloses that Williams' guilty pleas were knowingly, voluntarily and intelligently entered, *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986), and that they had a factual basis, *State v. Harrington*, 181 Wis. 2d 985, 989, 512 N.W.2d 261 (Ct. App. 1994). Additionally, the plea questionnaire and waiver of rights form Williams signed is competent evidence of knowing and voluntary pleas. *State v. Moederndorfer*, 141 Wis. 2d 823, 827-29, 416 N.W.2d 627 (Ct. App. 1987). Although a plea questionnaire and waiver of rights form may not be relied upon as a

² Attorney Melinda Swartz filed the WIS. STAT. RULE 809.32 no-merit report. Thereafter, Attorney Hannah Schieber was appointed successor counsel.

substitute for a substantive in-court personal colloquy, it may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time a plea is taken. *Hoppe*, 317 Wis. 2d 161, ¶¶30-32. We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Williams' guilty pleas.

With regard to the sentences, the record reveals that the sentencing court's discretionary decision had a "rational and explainable basis." *State v. Gallion*, 2004 WI 42, ¶76, 270 Wis. 2d 535, 678 N.W.2d 197. The court adequately discussed the facts and factors relevant to sentencing Williams to concurrent terms: a forty-two-month term for maintaining a drug trafficking place and a forty-four-month term for possession of heroin with intent to deliver. In fashioning the sentences, the court considered the seriousness of the offenses, Williams' character and lengthy history of other offenses, and the need to protect the public. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court stated reasons for refusing to consider the Challenge Incarceration Program, the Earned Release Program, or a risk reduction sentence. The felony sentences complied with WIS. STAT. § 973.01 relating to the imposition of a bifurcated sentence of confinement and extended supervision. No issue of arguable merit could arise from a challenge to the sentences.

The no-merit report addresses whether the circuit court erroneously denied Williams' motion to suppress evidence collected in a no-knock entry because the affidavit in support of the search warrant was insufficient and the inventory of the seized items was not returned within forty-eight hours. At the hearing on the motion, Williams conceded that he was a nonovernight guest on the property at the time of the search.

The circuit court denied the motion to suppress because, as a nonovernight guest on the premises, Williams had no reasonable expectation of privacy in the premises and therefore lacked standing to challenge the search. *State v. Bruski*, 2007 WI 25, ¶¶21-24, 299 Wis. 2d 177, 727 N.W.2d 503, supports the circuit court's decision. No issue of arguable merit could arise from a challenge to the denial of Williams' motion to suppress.

Finally, the no-merit report addresses whether trial counsel was ineffective for not litigating the identity of the confidential informant whose report of a controlled drug buy was a basis for the search warrant. Williams' counsel joined a motion by a co-actor to disclose the identity of the confidential informant. Another circuit court judge denied the co-actor's motion, and Williams' arguments were no different than the arguments rejected in the co-actor's case.

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.

To prevail on an ineffective assistance claim, Williams must show that his counsel's performance was prejudicial. *State v. Chu*, 2002 WI App 98, ¶47, 253 Wis. 2d 666, 643 N.W.2d 878. Because Williams lacked standing to challenge the search, he also lacked standing to challenge the warrant authorizing the search. Williams was not prejudiced by his trial counsel's failure to litigate the identity of the confidential informant.

Our independent review of the record does not disclose any potentially 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 Hannah Blair Schieber of further representation of Williams 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 (2011-12).

IT IS FURTHER ORDERED that Attorney Hannah Blair Schieber is relieved of further representation of Anthawn Williams in this matter.

Diane M. Fremgen
Clerk of Court of Appeals