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DISTRICT II

June 12, 2013

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

2012AP1577-CRNM State of Wisconsin v. Donte A. Wright (L.C. #2010CF199)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

Donte Wright appeals from a judgment convicting him of being a felon in possession of a firearm contrary to WIS. STAT. § 941.29(2)(a) (2009-10) and possession of cocaine as a second or subsequent offense contrary to § 961.41(3g)(c) (2009-10). Wright was convicted on both counts as a WIS. STAT. § 939.62 (2009-10) repeat offender. Wright's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738

¹ All subsequent references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

(1967). Wright filed a response to the no-merit report. Upon consideration of the report, Wright's response, 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 Wright's guilty pleas were knowingly, voluntarily, and intelligently entered and had a factual basis; (2) whether the circuit court misused its sentencing discretion; and (3) whether the circuit court erroneously denied Wright's motion to suppress evidence due to an allegedly unlawful stop. We agree with appellate counsel that these issues do not have arguable merit for appeal.

With regard to the entry of the guilty pleas, Wright 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 Wright's 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 Wright 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 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. Proof of Wright's prior drug convictions was presented at the plea hearing to establish his status as a repeat offender. We agree with appellate counsel that there would be no arguable merit to a challenge to the entry of Wright's guilty pleas.

In his response to counsel's no-merit report, Wright complains that he told his trial counsel that he wanted to withdraw his guilty pleas. He further contends that this matter should be litigated in the circuit court. As discussed above, appellate counsel has concluded that this appeal lacks arguable merit. Wright's response was his opportunity to advise this court of any issue he believes has arguable merit. Other than stating that he wants to withdraw his pleas, Wright does not set out a basis for challenging his guilty pleas. As discussed above, our review of the plea colloquy confirmed that Wright's guilty pleas were properly entered. Had our review of the no-merit report, Wright's response, and the record revealed an issue with arguable merit, we would have ordered postconviction or further appellate proceedings as appropriate with the assistance of counsel. *Anders*, 386 U.S. at 744; *see also State v. Tillman*, 2005 WI App 71, ¶¶16-18, 281 Wis. 2d 157, 696 N.W.2d 574.

The circuit court imposed and stayed consecutive sentences in favor of concurrent terms of four years of probation for possessing a firearm and two years of probation for possessing cocaine. 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 Wright. In fashioning the sentences, the court considered the seriousness of the offenses, Wright's character, drug use, personal associations, 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 stayed felony sentences complied with WIS. STAT. § 973.01 (2009-10) relating to the imposition of a bifurcated sentence of confinement and extended supervision. The probation terms complied with WIS. STAT. § 973.09(2)(b) (2009-10). We agree with appellate

counsel that there would be no arguable merit to a challenge to the sentences and probation terms.

The no-merit report addresses whether the circuit court erroneously denied Wright's motion to suppress. A search warrant authorized a search of a residence and "any vehicles parked on the curtilage or street associated with the occupants" of the address. However, the search warrant named another individual, not Wright, as residing at the address to be searched. Wright left the premises in a vehicle that had been parked in the driveway, and law enforcement stopped the vehicle five blocks away as soon as traffic conditions permitted a safe stop. Wright argued that he did not become a suspect until he exited the residence and entered the vehicle subject to the search warrant. Wright's friend later alleged that Wright owned the drugs and weapon-related items found in the residence.

The circuit court found that the residence and vehicle were both subject to the search warrant and that law enforcement validly stopped the vehicle. We agree with the circuit court. Even though Wright was not named as a suspect in the search warrant, Wright was properly detained after he exited the residence and departed in a vehicle that was subject to the search warrant. See *Bailey v. United States*, 133 S. Ct. 1031, 1042 (2013); *State v. Vorburger*, 2002 WI 105, ¶47, 255 Wis. 2d 537, 648 N.W.2d 829 ("For Fourth amendment purposes ... a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." (Citation omitted.)).

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 Steven Cotter of further representation of Wright 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 Steven Cotter is relieved of further representation of Donte Wright in this matter.

*Diane M. Fremgen
Clerk of Court of Appeals*