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April 10, 2019

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

2018AP1904-CRNM	State of Wisconsin v. Anthony Adams (L.C. #2016CF903)
2018AP1905-CRNM	State of Wisconsin v. Anthony Adams (L.C. #2016CF1739)

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

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).

In these consolidated cases, Anthony Adams appeals from judgments convicting him of possession of a firearm by an out-of-state felon, obstructing an officer, and felony bail jumping, the latter two as a repeater, and from an order denying his motion for postconviction relief.

Adams' appointed appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Adams was advised of his right to file a response but has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE 809.32, we summarily affirm the judgments and order because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The three charges to which Adams eventually pled stemmed from one incident in which he shot at a man in a convenience store parking lot and another in which he held a gun, allegedly loaded, to his wife's head after she told him she wanted a divorce. Ten additional felonies and misdemeanors were dismissed and read in at sentencing. All told, the court sentenced Adams to eight years' initial incarceration and six years' extended supervision.

Postconviction, Adams moved to withdraw his no-contest pleas on grounds that he did not understand the full range of punishment he faced because the circuit court did not inform him that he faced \$500 in mandatory DNA surcharges. *See State v. Radaj*, 2015 WI App 50, ¶35, 363 Wis. 2d 633, 866 N.W.2d 758 (holding that multiple DNA surcharges have a punitive effect); *see also* WIS. STAT. § 971.08(1)(a) and *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986) (circuit court must ensure defendant understands full range of punishment).

After Adams filed his motion, the state supreme court overruled *Radaj*. *State v. Williams*, 2018 WI 59, ¶29, 381 Wis. 2d 661, 912 N.W.2d 373. Shortly thereafter, this court held that plea-hearing courts do not have a duty to inform defendants about the mandatory DNA

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

surcharge, as the surcharge is not punishment and therefore is not a direct consequence of a plea. *State v. Freiboth*, 2018 WI App 46, ¶12, 383 Wis. 2d 733, 916 N.W.2d 643, *review denied*, 2018 WI 111, 384 Wis. 2d 465, 922 N.W.2d 293. The circuit court thus denied Adams' motion. This no-merit appeal followed.

The no-merit report first examines whether Adams' no-contest pleas were knowing, voluntary, and intelligent. As appellate counsel notes, the court engaged in a colloquy satisfying the requirements of *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and ascertained that Adams understood the plea questionnaire/waiver of rights form, *see State v. Hoppe*, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. It also afforded him additional time to consult with counsel when he appeared to hesitate at one point during the colloquy, and advised him it was not bound by any sentencing recommendations and could impose up to the maximum sentence. *See State v. Hampton*, 2004 WI 107, ¶69, 274 Wis. 2d 379, 683 N.W.2d 14.

The report also considers whether the sentence resulted from an erroneous exercise of discretion or was otherwise illegal. The court considered appropriate sentencing objectives, such as the gravity of Adams' offenses, his character, and the protection of the public, and explained on the record the reasons for the sentence imposed. *See State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. A sentence within the applicable maximums, as Adams' was, is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Finally, the no-merit report considers whether the circuit court erred in denying Adams' postconviction motion. No issue of arguable merit could arise from this point. As explained above, the law changed after Adams filed his postconviction motion but before the circuit court decided it. This court has unequivocally held that plea-hearing courts do not have a duty to inform defendants about the mandatory DNA surcharge, as the surcharge is not punishment and therefore is not a direct consequence of a plea. *Freiboth*, 383 Wis. 2d 733, ¶12.

Our review of the record discloses no other potential issues for appeal. Adams' no-contest pleas waived the right to raise nonjurisdictional defects and defenses arising from proceedings before entry of the pleas, including claimed violations of constitutional rights. *State v. Kraemer*, 156 Wis. 2d 761, 765, 457 N.W.2d 562 (Ct. App. 1990). Accordingly, we accept the no-merit report, affirm the judgments of conviction and the order denying postconviction relief, and discharge appellate counsel of the obligation to represent Adams further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgments of conviction and the order denying postconviction relief are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Brian C. Hagner is relieved from further representing Adams in this appeal. *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