



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

March 1, 2018

To:

Hon. John W. Markson
Circuit Court Judge
Dane County Courthouse, Br. 1
215 S. Hamilton St., Rm. 6109
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
215 S. Hamilton St., Rm. 1000
Madison, WI 53703

Margaret Delain
Assistant District Attorney
Rm. 3000
215 S. Hamilton St.
Madison, WI 53703-3297

Brandon Kuhl
Kuhl Law, LLC
P.O. Box 5267
Madison, WI 53705-0267

Christopher P. Brugger Jr. 523853
Green Bay Corr. Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

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

2016AP1575-CRNM State of Wisconsin v. Christopher P. Brugger, Jr.
(L.C. # 2015CF595)

Before Lundsten, P.J., Blanchard, and Fitzpatrick, 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).

Christopher Brugger, Jr. appeals an amended judgment convicting him, based upon a guilty plea, of battery by a prisoner as a repeat offender. Attorney Brandon Kuhl has filed a no-

merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2015-16);¹ *see also Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses Brugger’s plea, a motion to discharge counsel, the sentence, and sentence credit. Brugger was sent a copy of the report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we conclude that there are no arguably meritorious appellate issues.

First, we see no arguable basis for plea withdrawal. The circuit court conducted a plea colloquy, inquiring into Brugger’s ability to understand the proceedings and the voluntariness of his plea, and further exploring his understanding of the nature of the charge, the penalty range and other direct consequences of the plea, and the constitutional rights being waived. In addition, Brugger provided the court with a signed plea questionnaire, and told the court that he understood all of the information on that form. The facts set forth in the complaint and those that Brugger acknowledged to be true at the plea hearing—namely, that Brugger caused a soft-tissue injury to a jail official who was attempting to remove Brugger’s clothing, and that Brugger had a prior conviction within the past five years—provided a sufficient factual basis for the pleas. In conjunction with the plea questionnaire and complaint, the colloquy was sufficient to satisfy the court’s obligations under WIS. STAT. § 971.08. *See State v. Hoppe*, 2009 WI 41, ¶18, 317 Wis. 2d 161, 765 N.W.2d 794; *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Brugger has not alleged any other facts that would give rise to a manifest injustice warranting plea withdrawal.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

On the morning scheduled for trial, Brugger moved to discharge counsel and obtain successor counsel. Trial counsel explained that he and Brugger were in disagreement over whether to call a certain witness to testify. The circuit court found that there was no good cause to permit counsel to withdraw because the motion was untimely, there was no conflict of interest, there was not a breakdown of communication but rather a disagreement as to trial strategy, and there was no reason to believe the issue over whether to call the witness would not still be there with a new attorney. The court's discussion demonstrated a reasonable exercise of its discretion under *State v. Lomax*, 146 Wis. 2d 356, 360, 432 N.W.2d 89 (1988) (discussing factors relevant to a good cause determination). We see no other basis in the record to challenge counsel's performance.

A challenge to Brugger's sentence would also lack arguable merit. The record shows that the circuit court considered relevant sentencing factors and rationally explained their application to this case, emphasizing that Brugger had committed the present offense and read in offenses shortly after being released on supervision and that the public needed to be protected from Brugger's continuing pattern of criminal activity. *See generally State v. Gallion*, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. The court then sentenced Brugger to three years of initial confinement and three years of extended supervision, to be served consecutively to a revocation sentence Brugger was already serving.

The sentence imposed did not exceed the maximum available penalty. *See* WIS. STAT. §§ 940.20(1) (classifying battery by a prisoner as a Class H felony); 973.01(2)(b)8. and (d)5. (providing maximum terms of three years of initial confinement and three years of extended supervision for a Class H felony); 939.62(1)(b) (increasing maximum term of imprisonment for offense otherwise punishable by one to ten years by four additional years for habitual

criminality); 973.01(2)(c) (enlarging maximum initial incarceration period by the same amount as the total term of imprisonment based upon a penalty enhancer). Nor was the sentence unduly harsh, taking into account the read in offenses and Brugger's criminal history. *See generally State v. Grindemann*, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

The circuit court originally awarded 274 days of sentence credit for time that Brugger spent in custody in connection with both this case and a prior case on which his extended supervision was revoked. However, after it was brought to the court's attention that the sentence credit had already been awarded on the revocation sentence, the court properly amended the judgment of conviction to remove the sentence credit. *See State v. Boettcher*, 144 Wis. 2d 86, 423 N.W.2d 533 (1988) (no dual credit for consecutive sentences).

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

Accordingly,

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

IT IS FURTHER ORDERED that Attorney Brandon Kuhl is relieved of any further representation of Christopher Brugger, Jr. in this matter pursuant to 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