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February 11, 2020

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

2018AP1488-CRNM State of Wisconsin v. Ladell Demon Madlock
(L. C. No. 2015CF2459)

Before Stark, P.J., Hruz and Seidl, 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).

Counsel for Ladell Madlock has filed a no-merit report concluding no grounds exist to challenge Madlock's convictions for party to the crime of armed robbery, as a repeater, and fleeing or eluding a traffic officer. The no-merit report also concludes there are no grounds to challenge the order denying Madlock's postconviction motion for plea withdrawal and other relief. Madlock

was informed of his right to file a response to the no-merit report and has not responded. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the judgment and order. *See* WIS. STAT. RULE 809.21 (2017-18).[1]

The charges in this case arose from allegations that Madlock and a codefendant robbed Nathan[2] at gunpoint, stealing his phone, wallet and car. The complaint further alleged that approximately two hours later, law enforcement observed Nathan's car—which had a custom Illinois license plate—traveling on a Milwaukee street. When the officers attempted to initiate a traffic stop by activating their emergency lights and siren, the vehicle accelerated away from the officers. After approximately 2.5 miles, the vehicle slowed and Madlock exited from the driver's side while his codefendant exited from the passenger's side. Despite the codefendants' attempts to flee on foot, both were apprehended and taken into custody. Following his arrest, Madlock admitted to his involvement in the armed robbery.

Madlock agreed to enter guilty pleas to the crimes charged and both sides remained free to argue at sentencing. Out of maximum possible aggregate sentences totaling forty-nine and one-half years, the circuit court imposed concurrent sentences resulting in a twenty-year term, consisting of fifteen years' initial confinement and five years' extended supervision. The court determined Madlock was not eligible for either the Substance Abuse Program ("SAP") or the Challenge Incarceration Program ("CIP") because of the "violent nature of the crime."

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

[2] Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use a pseudonym instead of the victim's name.

Madlock filed a postconviction motion for plea withdrawal, claiming his plea was not knowing, intelligent and voluntary because the circuit court failed to advise him that a mandatory $500 DNA surcharge would be assessed against him. Madlock asserted that the DNA surcharge was part of the "range of punishments" he faced, and the court was therefore required to verify he was aware of the surcharge before accepting his pleas. Madlock moved, in the alternative, for thirty days of additional sentence credit, as well as eligibility for SAP and CIP.

The circuit court denied the motion for plea withdrawal consistent with ***State v. Freiboth***, 2018 WI App 46, 383 Wis. 2d 733, 916 N.W.2d 643. There, this court held that a plea hearing court does not have a duty to inform a defendant about the mandatory DNA surcharge because the surcharge is not punishment and, therefore, is not a direct consequence of the plea. ***Id.***, ¶12. The court granted Madlock's alternative request for sentence credit, but it denied his request for SAP and CIP eligibility. The court reiterated that it found Madlock ineligible for the programs because of the violent nature of the crime and not because it believed Madlock was statutorily ineligible.

The no-merit report addresses whether Madlock knowingly, intelligently and voluntarily entered his guilty pleas. As part of this discussion, the no-merit report acknowledges that the circuit court incorrectly stated during the plea colloquy that the maximum potential sentence for armed robbery, as a repeater, was forty-five years, consisting of thirty years of initial confinement and fifteen years of extended supervision. The correct legal maximum with the repeater enhancer, however, was forty-six years, consisting of thirty-one years of initial confinement and fifteen years of extended supervision. *See* WIS. STAT. §§ 943.32(1)(b) and (2); 939.50(3)(c); 939.62(1)(c); and 973.01(2)(b)3., (c), and (d)2. Citing ***State v. Taylor***, 2013 WI 34, 347 Wis. 2d 30, 829 N.W.2d 482, the no-merit report concludes that the court's error constitutes an insubstantial defect that does not warrant plea withdrawal. We agree.

In ***Taylor***, during the plea colloquy, the circuit court informed Taylor of the six-year maximum penalty for his crime, but it failed to explicitly inform him that he faced an additional two-year penalty as a result of a repeater allegation. ***Id.***, ¶2. Taylor received a six-year term of imprisonment. ***Id.***, ¶4. Our supreme court held that the circuit court's failure to discuss the repeater penalty enhancer was an insubstantial defect that did not warrant plea withdrawal where the record made clear that, despite the court's misstatement at the plea hearing, Taylor knew the maximum penalty that could be imposed and he was given the sentence the circuit court advised. ***Id.***, ¶¶8, 35-38, 54.

Similar to ***Taylor***, the complaint in Madlock's case stated that the maximum term of imprisonment could be increased by six years. The court informed Madlock at his initial appearance that the forty-year sentence could be increased "not more than six years." Further, the plea questionnaire form signed by Madlock acknowledged his understanding that he faced a maximum "46 years WSP (31 years i/c, 15 years e/s)." The record shows that Madlock knew he faced a maximum forty-six-year sentence despite the court's misstatement. Moreover, Madlock received a sentence well within the maximum stated by the court. We therefore conclude that any challenge to the plea on this basis, or any other, as discussed by the no-merit report, would lack arguable merit.

The no-merit report also addresses whether the circuit court properly exercised its sentencing discretion; whether the court properly denied Madlock's postconviction motion for plea withdrawal; and whether the court erroneously exercised its discretion in deeming Madlock ineligible for SAP or CIP. Upon reviewing the record, we agree with counsel's description, analysis, and conclusion that none of these issues has arguable merit. The no-merit report sets

forth an adequate discussion of the potential issues to support the no-merit conclusion, and we need not address them further.

Our independent review of the record discloses no other potential issue for appeal.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Leon W. Todd is relieved of his obligation to further represent Ladell Madlock in this matter. *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