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September 20, 2018

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

2017AP311-CRNM	State of Wisconsin v. Marcus Lashawn Pearson (L.C. # 2016CM749)
2017AP312-CRNM	State of Wisconsin v. Marcus Lashawn Pearson (L.C. # 2016CM1535)

Before Brash, J.[1]

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).

Marcus Lashawn Pearson appeals judgments convicting him of three counts of unlawful use of a telephone and one count of intimidation of a victim, all as incidents of domestic abuse.

[1] These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Attorney Jon A. LaMendola filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32, and ***Anders v. California***, 386 U.S. 738, 744 (1967). Pearson was advised of his right to respond, but he has not done so. After conducting an independent review of the records, we conclude that there are no issues of arguable merit that Pearson could raise on appeal. Therefore, we summarily affirm the judgments of conviction. *See* WIS. STAT. RULE 809.21.

The no-merit report first addresses whether there would be any basis for arguing that Pearson did not knowingly, intelligently, and voluntarily enter his guilty pleas. In order to ensure that a defendant is knowingly, intelligently, and voluntarily waiving the right to trial by entering a guilty plea, the circuit court must conduct a colloquy with a defendant to ascertain that the defendant understands the elements of the crimes to which he is pleading guilty, the constitutional rights he is waiving by entering the plea, and the maximum potential penalties that could be imposed. *See* WIS. STAT. § 971.08; ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The circuit court may refer to a plea colloquy and waiver-of-rights form, which the defendant has acknowledged reviewing and understanding, as part of its inquiry, reducing "the extent and degree of the colloquy otherwise required between the [circuit] court and the defendant." ***State v. Hoppe***, 2009 WI 41, ¶42, 317 Wis. 2d 161, 765 N.W.2d 794 (citation and quotation marks omitted).

During the plea hearing, the circuit court explained the elements of the crimes to Pearson on the record and informed him of the maximum penalties he faced by entering pleas. The circuit court personally reviewed with Pearson the constitutional rights he was waiving, and ascertained that Pearson had reviewed the plea questionnaire and waiver-of-rights forms with his

lawyer. The circuit court also ascertained that Pearson understood the forms and had discussed them with his lawyer before signing them.

The circuit court informed Pearson that if he was not a citizen of the United States of America, he could be deported if he pled guilty. *See* WIS. STAT. § 971.08(1)(c). The circuit court explained to Pearson that it was not required to follow the recommendation of the prosecution or the defense. The circuit court also asked Pearson whether he had enough time to review everything with his lawyer, and he said he did. Based on the circuit court's thorough plea colloquy with Pearson, and Pearson's review of the plea questionnaire and waiver-of-rights forms, there would be no arguable merit to an appellate challenge to the pleas.

The no-merit report next addresses whether there would be arguable merit to a claim that the circuit court misused its sentencing discretion. The circuit court imposed three concurrent terms of ninety days in jail for the three counts of unlawful use of a telephone, but stayed the sentence in favor of eighteen months of probation. The circuit court also imposed six months in jail for intimidation of a victim, but stayed the sentence in favor of eighteen months of probation, to be served consecutively to the probation term imposed in the first case. The circuit court took into account the seriousness of the crime and the effect of Pearson's actions on the victim. The circuit court considered the objectives of the sentence and appropriate factors in deciding what length of sentence to impose, and explained its decision in accordance with the framework set forth in ***State v. Gallion***, 2004 WI 42, ¶¶39-46, 270 Wis. 2d 535, 678 N.W.2d 197. Therefore, there would be no arguable merit to an appellate challenge to the sentence.

The no-merit report next addresses whether there are any new factors that would support a motion to modify Pearson's sentence. Counsel explains that he has found no factual or legal

basis to support a sentence modification claim. Similarly, our review of the record reveals no basis for such a claim. Therefore, we conclude that there would be no arguable merit to a motion to modify Pearson's sentence.

Finally, the no-merit report addresses whether there would be arguable merit to a claim that Pearson received ineffective assistance of counsel. Attorney LaMendola explains that he has consulted with Pearson and with Pearson's trial counsel as to this issue, but he has not discovered any action or inaction by trial counsel that would support a claim that Pearson received ineffective assistance of counsel. Our review of the record reveals no basis for a claim of ineffective assistance. Therefore, we conclude that there would be no arguable merit to a claim that Pearson received ineffective assistance of counsel.

A total of four DNA surcharges were assessed on the two judgments of conviction. Because of the multiple DNA surcharges, we previously put these appeals on hold pending the Wisconsin Supreme Court's decision in ***State v. Odom***, No. 2015AP2525-CR, which was expected to address whether a defendant could withdraw a plea because the defendant was not advised at the time of his plea that multiple mandatory DNA surcharges would be assessed. The ***Odom*** appeal was voluntarily dismissed before oral argument. These cases were then held for a decision in ***State v. Freiboth***, 2018 WI App 46, __ Wis. 2d __, __ N.W.2d __. ***Freiboth*** holds that a plea hearing court does not have a duty to inform the defendant about the mandatory DNA surcharge because the surcharge is not punishment and is not a direct consequence of the plea. ***Id.***, ¶12. Consequently, there is no arguable merit to a claim for plea withdrawal based on the assessment of mandatory DNA surcharges

Our independent review of the record also reveals no arguable basis for reversing the judgments of conviction. Therefore, we affirm the judgments and relieve Attorney LaMendola of further representation of Pearson.

IT IS ORDERED that the judgments of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Jon LaMendola is relieved of further representation of Pearson in these matters. *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