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DISTRICT II

December 11, 2024

To:

Hon. Sandra J. Giernoth
Circuit Court Judge
Electronic Notice

Sarah Adjemian
Clerk of Circuit Court
Washington County Courthouse
Electronic Notice

Leonard D. Kachinsky
Electronic Notice

Jennifer L. Vandermeuse
Electronic Notice

Richard Alexander Allen III #267461
Jackson Correctional Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2024AP602-CRNM State of Wisconsin v. Richard Alexander Allen, III
(L.C. #2020CF161)

Before Gundrum, P.J., Grogan and Lazar, 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).

Richard Alexander Allen, III, appeals from a judgment convicting him of operating a motor vehicle while under the influence (OWI) as a seventh offense. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2021-22)¹ and *Anders v. California*, 386 U.S. 738 (1967). Allen filed a response. After reviewing the record, counsel's report, and Allen's response, we conclude there are no issues with arguable merit for appeal. Therefore, we summarily affirm the judgment. *See* WIS. STAT. RULE 809.21.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Allen was convicted following a guilty plea to OWI as a seventh offense. He was stopped for a lane deviation and later found to have a blood alcohol concentration of .084. The circuit court sentenced Allen to three-and-a-half-years of initial confinement and five years of extended supervision. It ordered the sentence to run consecutive to any other sentence.²

After sentencing, Allen filed a pro se motion for sentence modification. He argued that a change in Department of Corrections policy regarding his eligibility for the substance abuse program constituted a new factor. The circuit court denied the motion, concluding that the change was not a fact highly relevant to its sentence. This no-merit appeal follows.

The no-merit report addresses (1) whether Allen's plea was knowingly, voluntarily, and intelligently entered; (2) whether the circuit court properly exercised its discretion at sentencing; and (3) whether the court properly denied Allen's motion for sentence modification. This court is satisfied that the no-merit report correctly analyzes the issues it raises as without merit, and we will not discuss them further.

As noted, Allen filed a response to counsel's no-merit report. The response discusses some of the issues addressed in the no-merit report, which we will not repeat. It also asserts that Allen's sentence should have been ordered to run concurrent to his revocation sentence and that he should have received credit for time spent in pre-sentence custody.

We are not persuaded that Allen's response presents an issue of arguable merit. Here, the circuit court expressly rejected Allen's request for a concurrent sentence at sentencing, citing his

² At the time of sentencing, Allen was serving a prison sentence as a result of his revocation in other matters.

criminal history, the need for deterrence, and the need to protect the public. Because Allen already received credit for time spent in pre-sentence custody on his revocation sentence, he was not entitled to that same credit on his consecutive sentence in this case. *See State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988).

Our review of the record discloses no other potential issues for appeal.³ Accordingly, this court accepts the no-merit report, affirms the judgment of conviction, and discharges appellate counsel of the obligation to represent Allen further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Leonard D. Kachinsky is relieved of further representation of Richard Alexander Allen, III, in this appeal. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals

³ We note that Allen's plea forfeited the right to raise other nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *See State v. Kelty*, 2006 WI 101, ¶18 & n. 11, 294 Wis. 2d 62, 716 N.W.2d 886; *see also State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53.