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DISTRICT I

February 6, 2024

To:

Hon. Jeffrey A. Wagner
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Gregory Bates
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Tavion T. Caldwell 628439
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Plymouth, WI 53073-0282

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

2023AP803-CRNM State of Wisconsin v. Tavion T. Caldwell (L.C. # 2018CF5561)

Before White, C.J., Donald, P.J., and Colón, 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).

Tavion T. Caldwell appeals his judgment of conviction entered after he pled guilty to armed robbery. His appellate counsel, Gregory Bates, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2021-22).¹ Caldwell was advised of his right to file a response, but he did not do so. Upon this court's independent review of the record as mandated by *Anders*, and counsel's report, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm.

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

Caldwell, along with co-defendant Leon L. Paige, Jr., was charged with armed robbery in November 2018 after robbing J.A.M. at gunpoint as she was pulling into her garage. They were identified through video surveillance footage at a gas station where they tried using J.A.M.'s credit cards shortly after the robbery.

Caldwell chose to resolve this matter with a plea. Pursuant to the plea agreement, Caldwell pled guilty to the armed robbery charge, with another armed robbery charge in a separate case dismissed but read in at sentencing. The plea agreement also included a provision that Caldwell would cooperate with the State in other unrelated cases against Paige, as well as testify in another unrelated case in Dodge County.

Caldwell entered his guilty plea in January 2020. He was sentenced in April 2022, after the cases requiring his cooperation were resolved. The circuit court imposed a thirteen year sentence, bifurcated as seven years of initial confinement to be followed by six years of extended supervision. This no-merit appeal follows.

The no-merit report first addresses whether Caldwell's plea was knowingly, voluntarily, and intelligently entered. *See State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. The plea colloquy by the circuit court complied with the requirements set forth in WIS. STAT. § 971.08 and *Brown*, 293 Wis. 2d 594, ¶35.² The court also confirmed that Caldwell signed and understood the plea questionnaire and waiver of rights form, which further demonstrates that Caldwell's plea was knowingly, voluntarily, and intelligently entered.

² In the no-merit report, appellate counsel asserts that the circuit court did not provide the warning regarding consequences for defendants who are not citizens, as required under WIS. STAT. § 971.08(1)(c), during the plea colloquy. However, the record indicates that the circuit court did in fact give this warning as required.

See State v. Moederndorfer, 141 Wis. 2d 823, 827, 416 N.W.2d 627 (Ct. App. 1987). There would be no arguable merit to a challenge to the plea's validity.

Appellate counsel notes that there were no pretrial issues that were preserved despite Caldwell's entry of a guilty plea. Also, we observe that after Caldwell's plea was accepted but before his sentencing, Caldwell moved the circuit court several times for release on bail, due to the Dodge County trial being adjourned numerous times. The circuit court denied these motions based on the nature of Caldwell's offense—armed robbery—along with the fact that there was an additional armed robbery offense that was dismissed but read in. This was within the circuit court's discretion, *see* WIS. STAT. § 969.01(2)(c), and we conclude there would be no arguable merit to a challenge of the circuit court's decisions on that issue.

Next, the no-merit report addresses Caldwell's sentence. The circuit court acts within its discretion when it considers relevant sentencing objectives and factors, including the protection of the community, punishment and rehabilitation of the defendant, and deterrence to others. *State v. Gallion*, 2004 WI 42, ¶¶17, 40, 270 Wis. 2d 535, 678 N.W.2d 197; *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The record here reflects that the circuit court did consider the relevant objectives and factors. It also considered Caldwell's cooperation with the State in its prosecution of other matters. Furthermore, the sentence imposed is well within the statutory maximum, and therefore is not presumptively unduly harsh or unconscionable. *See State v. Grindemann*, 2002 WI App 106, ¶32, 255 Wis. 2d 632, 648 N.W.2d 507. There would be no arguable merit to a challenge of Caldwell's sentence.

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

Upon the foregoing,

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

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of further representation of Tavion T. Caldwell in this matter. *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