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DISTRICT I

September 26, 2013

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

2013AP574-CRNM State of Wisconsin v. Laron D. Ferguson
(L.C. # 2011CF4791)

Before Curley, P.J., Fine and Brennan, JJ.

Laron D. Ferguson appeals from a corrected judgment entered after he pled no-contest to second-degree sexual assault with use of force and one count of armed robbery with use of force and guilty to a second count of armed robbery with use of force. *See* WIS. STAT. §§ 940.225(2)(a) & 943.32(2). Ferguson's appellate lawyer, Assistant State Public Defender Colleen Marion, has filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Ferguson did not respond. After independently reviewing the Record and the no-merit report, this court concludes there are no issues of arguable merit that

could be raised on appeal and summarily affirms the corrected judgment of conviction. *See* WIS. STAT. RULE 809.21.

Background

Ferguson was originally charged with attempted armed robbery, kidnapping, first-degree sexual assault, and two counts of armed robbery. As set forth in the complaint, Ferguson used a BB gun to rob two women. He similarly attempted to rob a third woman; however, after realizing that she did not have any money, he raped her.

Plea

Ferguson's appellate lawyer addresses whether Ferguson has an arguably meritorious basis for challenging his plea on appeal. We agree with her conclusion that this issue lacks arguable merit.

Pursuant to a plea bargain, Ferguson pled no-contest to second-degree sexual assault with use of force and one count of armed robbery with use of force and guilty to a second count of armed robbery with use of force.[1] In exchange, the State agreed to amend the original charge of first-degree sexual assault and to dismiss the attempted armed robbery and kidnapping charges. The State further agreed to recommend prison, without specifying an opinion as to the duration.

[1] The plea hearing transcript reveals that Ferguson originally indicated he wanted to enter an ***Alford*** plea to the amended charge of second-degree sexual assault. *See* ***North Carolina v. Alford***, 400 U.S. 25, 37–38 (1970). When the circuit court advised Ferguson that it did not know that it would accept such a plea, Ferguson—after conferring with his trial lawyer—changed his plea to no-contest. *See* ***State ex rel. Warren v. Schwarz***, 219 Wis. 2d 615, 651 & n.21, 579 N.W.2d 698, 714 & n.21 (1998) ("The acceptance of ***Alford*** pleas is entirely discretionary.").

To be valid, a guilty plea must be knowing, intelligent, and voluntary. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12, 20 (1986). Ferguson completed a plea questionnaire and waiver of rights form, *see* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827–828, 416 N.W.2d 627, 630 (Ct. App. 1987), in which he acknowledged that his lawyer had explained the elements of the offenses to which he was pleading. The relevant jury instructions were attached to the form. Ferguson's trial lawyer also attached a table setting forth the maximum terms of imprisonment Ferguson faced on each count. The attachment further explained that a conviction for second-degree sexual assault carried additional consequences: "a. Registration as a sex offender[;] b. Covered by Sexual Violent Persons Commitment, Ch. 980." The form, along with an addendum, additionally specified the constitutional rights that Ferguson was waiving with his plea. *See* ***Bangert***, 131 Wis. 2d at 270–272, 389 N.W.2d at 24–25. In conjunction, the circuit court conducted a plea colloquy, as required by WIS. STAT. § 971.08, ***Bangert***, and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 399, 683 N.W.2d 14, 24. This court concludes that there would be no arguable merit to challenging the validity of Ferguson's pleas.[2]

[2] As Ferguson's appellate lawyer points out, the circuit court failed to comply—verbatim—with the procedural mandate of WIS. STAT. § 971.08(1)(c), which requires the court, before accepting a guilty plea, to:

> Address the defendant personally and advise the defendant as follows: "If you are not a citizen of the United States of America, you are advised that a plea of guilty or no contest for the offense with which you are charged may result in deportation, the exclusion from admission to this country or the denial of naturalization, under federal law."

See ***State v. Douangmala***, 2002 WI 62, ¶21, 253 Wis. 2d 173, 182, 646 N.W.2d 1, 5 (explaining that § 971.08(1)(c) "'not only commands what the court must personally say to the defendant, but the language is bracketed by quotation marks, an unusual and significant legislative signal that the statute should be followed to the letter'") (citation omitted). However, to be entitled to plea withdrawal on this basis, Ferguson would have to show "that the plea is likely to result in [his] deportation, exclusion from (continued)

Sentencing

Ferguson's appellate lawyer next addresses whether the circuit court erroneously exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 549, 678 N.W.2d 197, 203. At sentencing, a circuit court must consider the principle objectives of sentencing, including the protection of the community, the punishment and rehabilitation of the defendant, and deterrence to others, ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 606, 712 N.W.2d 76, 82, and determine which objective or objectives are of greatest importance, *see* ***Gallion***, 2004 WI 42, ¶41, 270 Wis. 2d at 557–558, 678 N.W.2d at 207. In seeking to fulfill the sentencing objectives, the circuit court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public, and may consider several subfactors. *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 851, 720 N.W.2d 695, 699. The weight to be given to each factor is committed to the circuit court's discretion. *See* ***Gallion***, 2004 WI 42, ¶41, 270 Wis. 2d at 557–558, 678 N.W.2d at 207.

In sentencing Ferguson, the circuit court highlighted the serious nature of the charges, describing the circumstances as they related to the sexual assault victim as a "nightmare." Regardless of the fact that Ferguson's weapon turned out to be a BB gun, the circuit court explained that the victim "didn't have a choice. She was looking at her life and being sexually assaulted, as terrible as that is, is better than being shot and killed." The circuit court reflected on the terror all three victims experienced.

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admission to this country or denial of naturalization." *See* § 971.08(2). There is no indication in the record that Ferguson can make such a showing.

When considering Ferguson's character, the circuit court noted the positive relationship he had with his mother and concluded: "I don't get it. I don't get why. It seems as if you had opportunity. You have had a supportive family. You have had jobs. You have had school. You are in a place much better than many people in this community." The circuit court went on to note, however, that Ferguson had a "very serious drug problem." It accounted for the fact that Ferguson allegedly took Ecstasy pills on the day of the crimes and that drugs lower inhibitions, but stated: "I don't believe that when people take drugs that it changes them into a totally different person. Otherwise drugs could be blamed for every offense."

To protect the public, the circuit court concluded that a serious punishment was needed. The circuit court determined that time in custody was required in order to remove Ferguson from the community and to get him treatment so that he would not repeat his crimes.

On the charge of second-degree sexual assault, the circuit court sentenced Ferguson to six years of initial confinement and four years of extended supervision. On the armed robbery charges, the circuit court sentenced Ferguson to four years of initial confinement and four years of extended supervision, to run concurrent to each other but consecutive to the sexual-assault sentence.[3]

The maximum possible sentence Ferguson could have received was one hundred and twenty years. Ferguson's sentence totaling eighteen years is well within the range authorized by law, *see* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 108–109, 622 N.W.2d 449,

[3] As Ferguson's appellate lawyer notes, the circuit court, at this point, totaled up the sentences as amounting to ten years of initial confinement and twelve years of extended supervision. The proper (continued)

456–457, and is not so excessive as to shock the public's sentiment, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457, 461 (1975). There would be no arguable merit to a challenge to the court's sentencing discretion.

Our independent review of the Record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Colleen Marion, Esq., is relieved of further representation of Laron D. Ferguson in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

cumulative total, as reflected on the corrected judgment of conviction, is ten years of initial confinement and eight years of extended supervision.