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

2013AP794-CRNM State v. Pierre E. Young (L.C. # 2011CF005826)

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

Pierre E. Young appeals from a judgment of conviction for one count of strangulation and suffocation, domestic abuse, contrary to WIS. STAT. §§ 940.235(1) and 968.075(1)(a)1. (2011-12), which was entered on his no-contest plea.[1] Young's postconviction/appellate counsel, Kaitlin A. Lamb, has filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Young has not filed a response. We have independently reviewed the record and the no-merit report as mandated by ***Anders***, and we

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

conclude that there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm.

According to the criminal complaint, police officers were called to the home of a woman who has children with Young and used to live with him. The woman had suffered significant injuries, including a gash on her forehead that required fourteen stitches to close. She told the officers that Young, with whom she had recently broken up, grabbed her neck and choked her, causing her to fall to the floor. Then, Young grabbed a glass candlestick and hit her in the face with it "repeatedly until it shattered in her face." The woman told the police that "twice in the recent past when she has tried to leave the defendant, he has physically attacked her." One of the woman's children witnessed part of the attack and gave the police a statement.

Young was charged with the aforementioned crime and with substantial battery, domestic abuse, by use of a dangerous weapon. He entered a plea agreement with the State pursuant to which Young pled no contest to the strangulation and suffocation count and the State moved to dismiss and read in the substantial battery count.[2] The State agreed to recommend three years of initial confinement and three years of extended supervision, and Young was free to argue for a lesser sentence. The trial court accepted Young's plea and found him guilty.

At sentencing, the trial court followed the State's recommendation and imposed the maximum sentence of three years of initial confinement and three years of extended supervision.

[2] Trial counsel told the trial court that Young "can't remember the incident" but after reviewing the evidence, "he figures that even though he can't remember, he probably did it and is not gonna contest the charge." The trial court later asked Young about the crime, stating: "I understand, sir, that you don't have a full memory of the event of this night, but … from your review of the evidence and your discussions with … your attorney, you believe that this is probably what happened, right?" Young responded affirmatively.

It also ordered Young to provide a DNA sample and pay the DNA surcharge.[3] Finally, the trial court accepted Young's stipulation to pay $680 in restitution to the victim.

The no-merit report addresses two issues: (1) whether Young's no-contest plea was knowingly, voluntarily, and intelligently entered; and (2) whether the trial court erroneously exercised its sentencing discretion. This court agrees with postconviction/appellate counsel's description and analysis of the potential issues identified in the no-merit report and independently concludes that pursuing them would lack arguable merit. In addition to agreeing with appellate counsel's description and analysis, we will briefly discuss those issues.

We begin with the plea. There is no arguable basis to allege that Young's no-contest plea was not knowingly, intelligently, and voluntarily entered. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986); WIS. STAT. § 971.08. He completed a plea questionnaire and waiver of rights form, which the trial court referenced during the plea hearing. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). The trial court conducted a thorough plea colloquy addressing Young's understanding of the plea agreement and the charge to which he was pleading guilty, the penalties he faced, and the constitutional rights he was waiving by entering his plea.[4] *See* § 971.08; ***State v. Hampton***, 2004 WI 107, ¶38,

[3] The trial court explained that Young had been employed and was "very industrious." It said that it did not see "anything in his record that would indicate that he'd be unable to pay this particular cost." This explanation demonstrates that the trial court considered one of the factors this court has identified as relevant to a trial court's decision on imposing the DNA surcharge. *See* ***State v. Cherry***, 2008 WI App 80, ¶10, 312 Wis. 2d 203, 752 N.W.2d 393 (One factor that can be considered is the "financial resources of the defendant."). There would be no arguable merit to challenging the imposition of the DNA surcharge in this case.

[4] Counsel notes that the trial court failed to comply with the procedural mandate of WIS. STAT. § 971.08(1)(c), which requires the court, before accepting a guilty plea, to:

(continued)

274 Wis. 2d 379, 683 N.W.2d 14; ***Bangert***, 131 Wis. 2d at 266-72. The trial court went through the elements and penalties of the crime with Young. It noted that the jury instructions for the crime were attached to the guilty plea questionnaire, and Young personally confirmed that he had gone over the jury instructions with his attorney. The trial court told Young that it was not bound by the parties' recommendations, and it confirmed that Young had not been coerced into pleading guilty. The trial court also found that there was a factual basis for the plea after it reviewed the criminal complaint, which both parties stipulated provided a factual basis for the plea. The plea questionnaire, waiver of rights form, and the trial court's colloquy appropriately advised Young of the elements of the crime and the potential penalties he faced, and otherwise complied with the requirements of ***Bangert*** and ***Hampton*** for ensuring that the plea was knowing, intelligent, and voluntary. There would be no basis to challenge Young's guilty plea.

Next, we turn to the sentencing. We conclude that there would be no arguable basis to assert that the trial court erroneously exercised its sentencing discretion, *see* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197, or that the sentence was excessive, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

> 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, 646 N.W.2d 1 (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). Here, the trial court did not read the statutory language. However, to be entitled to plea withdrawal on this basis, Young would have to show "that the plea is likely to result in [his] deportation, exclusion from admission to this country or denial of naturalization." *See* § 971.08(2). We agree with counsel that there is no indication in the record that Young can make such a showing and, therefore, there is no arguable basis to pursue plea withdrawal.

At sentencing, the trial court must consider the principal 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, 712 N.W.2d 76, and it must determine which objective or objectives are of greatest importance, ***Gallion***, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the trial 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 it may consider several subfactors. ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor is committed to the trial court's discretion. *See* ***Gallion***, 270 Wis. 2d 535, ¶41.

In this case, the trial court applied the standard sentencing factors and explained their application in accordance with the framework set forth in ***Gallion*** and its progeny. The trial court discussed the offense and said that the victim "was brutalized." It called the offense a "serious felony" that could have resulted in the victim's death and also noted that Young has "a history of violence against women that goes back quite a ways." The trial court recognized that Young had a number of prior convictions, including disorderly conduct, criminal trespass, resisting, escape, and possession of cocaine. The trial court discussed the need to protect women and children, including the children who were in the home when Young committed the crime. The trial court recognized that Young has some mental health issues, but said that they did not excuse his behavior. It concluded that "based on … the history of domestic violence," Young's past failure on probation, and a pending case involving another victim in Illinois, "there needs to be a substantial incarceration." We conclude that based on the trial court's explanation of its sentence, there would be no merit to challenge the trial court's compliance with ***Gallion***.

Further, there would be no merit to assert that the sentence was excessive. *See* ***Ocanas***, 70 Wis. 2d at 185. Although Young received the maximum sentence of three years of initial confinement and three years of extended supervision, his exposure had been reduced by seven-and-a-half years when the second count was dismissed and read in. Given Young's criminal history and the seriousness of both the conviction and the read-in crime, the sentence does not "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *See* ***id.*** There would be no merit to challenging the trial court's exercise of 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 judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Kaitlin A. Lamb is relieved of further representation of Young in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals