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February 12, 2014

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

2013AP2191-CRNM State of Wisconsin v. Christopher C. Hyler (L.C. #2012CM232)

Before Reilly, J.¹

Christopher C. Hyler appeals a judgment convicting him of two counts of disorderly conduct with domestic abuse assessments and repeater enhancers. Hyler's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Hyler received a copy of the report and was notified of his right to file a response but he has not done so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders* and RULE 809.32, we conclude that the judgment may be

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

summarily affirmed, as there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21. We therefore affirm the judgment and relieve Attorney Gregory A. Petit of further representing Hyler in this matter.

Upset because his mother would not give him cigarettes, Hyler dumped food on the floor, smashed property with a hammer, threw her iPad outside and threw a clock on the roof, dumped water, orange juice, and shaving cream on her mattress, then burned holes in it, and threatened to harm the pets. A few days later he returned. When his mother told him to leave, he deflated her car tires, dented the hood, and put a dead mouse on the door handle. Hyler was charged with three counts of disorderly conduct and two counts of criminal damage to property, all with domestic abuse assessments and repeater enhancers. A psychologist found Hyler competent to stand trial. He pled no contest to two counts of disorderly conduct as charged. The remaining counts were dismissed and read in. The circuit court sentenced Hyler to two years' imprisonment, bifurcated as one year each of initial confinement and extended supervision.² This no-merit appeal followed.

The no-merit report first addresses whether Hyler's no contest plea was knowing, voluntary and intelligent, especially in light of questions raised about Hyler's competency. The psychologist who examined Hyler filed a five-page report supporting her professional opinion that Hyler was competent. The court allowed breaks in the proceeding so that Hyler and his

² We note that the written explanation of determinate sentence found in the record is inaccurate. It correctly indicates that the total length of Hyler's sentence for count three is two years, but then states that his initial confinement term is one year and one month. Nothing is entered for his term of extended supervision. On remittitur, the document should be corrected to accurately reflect the trial court's sentence.

lawyer could confer, and granted Hyler additional time to review police reports before deciding which two disorderly conduct charges to plead to. Also, before preparing this no-merit report, appellate counsel secured State Public Defender funding for a second psychological evaluation.³

The record also confirms that the court's colloquy with Hyler satisfied the requirements of WIS. STAT. § 971.08(1) as set forth in *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.⁴ In conjunction with the substantive colloquy, the court properly used Hyler's signed plea questionnaire to ascertain that he understood the ramifications of entering a plea. See *State v. Hoppe*, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794. We agree with counsel's conclusion that no issue of merit could arise from the plea taking.

The no-merit report also considers the circuit court's exercise of discretion at sentencing. Sentencing is left to the discretion of the circuit court, and appellate review is limited to determining whether that discretion was erroneously exercised. *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The court must provide a "rational and explainable basis" for the sentence it imposes to allow this court to ensure that discretion in fact was exercised. *Id.*, ¶¶39, 76 (citation omitted). In determining an appropriate sentence, the court must consider three primary factors: the gravity of the offense, the character of the defendant,

³ Counsel did not divulge the contents of the confidential report but it is reasonable to assume that he would not have filed the no-merit report had Hyler been deemed incompetent.

⁴ Although the circuit court failed to advise Hyler of a plea's potential deportation consequences, see WIS. STAT. § 971.08(1)(c), the record indicates Hyler was born and raised in Wisconsin. Hyler's counsel told the court that he reviewed the plea questionnaire with Hyler "at least twice and explored everything for about an hour each time." In the "Understandings" section of the plea questionnaire, certain statements—those relating to felonies—are crossed out. The citizenship statement is not, suggesting that it was reviewed with Hyler. Hyler likely could not show that the plea is likely to result in his being deported. See *State v. Douangmala*, 2002 WI 62, ¶23, 253 Wis. 2d 173, 646 N.W.2d 1; see also § 971.08(2).

and the need to protect the public. *State v. Harris*, 119 Wis. 2d 612, 623, 350 N.W.2d 633 (1984). The weight to be given the various factors is within the court's discretion. *Cunningham v. State*, 76 Wis. 2d 277, 282, 251 N.W.2d 65 (1977). The court should explain the objectives of the sentence, which may include but are not limited to protecting the community, punishing the defendant, rehabilitating the defendant, and deterring others. *Gallion*, 270 Wis. 2d 535, ¶40. A sentence is unduly harsh only if its length is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances. *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

The court thoroughly explained the basis for the sentence it ordered. It noted the seriousness of the offenses, the danger Hyler poses to his mother and the general public, his prior failures on probation, the lack of impact prior short stints in jail had had on him, and that prison and the conditions of extended supervision could help address his persistent criminal behaviors. Hyler's mother submitted damage estimates associated with the criminal damage to property charges and the court ordered restitution in that amount. Restitution may be ordered on charges that are dismissed and read in. *State v. Torpen*, 2001 WI App 273, ¶14, 248 Wis. 2d 951, 637 N.W.2d 481. Finally, when the Department of Corrections noted a possible error in sentence credit, the court amended the judgment of conviction accordingly and sent the parties a letter of explanation. We agree with appellate counsel that no basis exists to disturb the sentence.

Our review of the record discloses no other potential issues for appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Gregory A. Petit is relieved of further representing Hyler in this matter.

Diane M. Fremgen
Clerk of Court of Appeals