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February 6, 2014

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

2013AP2358-CRNM State of Wisconsin v. Lance Terrell Pinkens (L.C. #2012CM5939)

Before Fine, J.

Lance Terrell Pinkens pled guilty to the misdemeanor offense of obstructing an officer. *See* WIS. STAT. § 946.41(1). The circuit court sentenced him to 140 days in jail and ordered that he serve the sentence consecutively to any sentence previously imposed. The circuit court initially awarded Pinkens credit for three days of presentence incarceration, but, soon after sentencing, the circuit court vacated the award because it duplicated credit that Pinkens had received against his term of reconfinement in another case.

The state public defender appointed Dustin C. Haskell, Esq., to represent Pinkens in postconviction and appellate proceedings. Haskell filed and served a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Pinkens did not file a response. This court has considered the no-merit report, and we have independently reviewed the Record. We conclude that no arguably meritorious issues exist for appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, Pinkens gave police several false names and dates of birth during a traffic stop. The State charged Pinkens with obstructing an officer. Pinkens quickly told the circuit court that he wanted to plead guilty.

Pinkens could not mount an arguably meritorious challenge to his guilty plea. At the outset of the plea proceeding, Pinkens's trial lawyer described the parties' plea bargain: Pinkens would plead guilty as charged, and the State would recommend a sentence of thirty days in jail, concurrent with any other sentence. The State confirmed that this was the plea bargain. Further, Pinkens said that he understood its terms.

The circuit court described to Pinkens the maximum penalties that he faced upon conviction. The circuit court explained that it was not bound by the plea bargain or the parties' recommendations, that it could impose a consecutive sentence, and that it could impose the statutory maximum sentence if it deemed such a maximum sentence appropriate. Pinkens said that he understood. Pinkens told the circuit court that he had not been promised anything outside of the plea bargain to induce his guilty plea and that he had not been threatened in order to get him to plead guilty.

A signed guilty plea questionnaire and waiver of rights form is in the Record. Pinkens confirmed that he reviewed the form with his trial lawyer and that he understood it. The circuit court explained to Pinkens that by pleading guilty he would give up the constitutional rights listed on the form, and the circuit court reviewed those rights. Pinkens told the circuit court that he understood his rights and that he had no questions about them. Pinkens also told the circuit court that he reviewed the Addendum to Plea Questionnaire and Waiver of Rights form with his lawyer and that he understood it. The Addendum bears the signature of both Pinkens and his lawyer and reflects Pinkens's acknowledgment that by pleading guilty he would give up his rights to raise defenses and to challenge the validity of his arrest.

"[A] circuit court must establish that a defendant understands every element of the charges to which he pleads." ***State v. Brown***, 2006 WI 100, ¶58, 293 Wis. 2d 594, 627, 716 N.W.2d 906, 922. The circuit court may establish the defendant's understanding in a variety of ways: "summarize the elements of the offenses on the record, or ask defense counsel to summarize the elements of the offenses, or refer to a prior court proceeding at which the elements were reviewed, or refer to a document signed by the defendant that includes the elements." ***Id.***, 2006 WI 100, ¶56, 293 Wis. 2d at 626, 716 N.W.2d at 922. Here, Pinkens submitted a document that he initialed describing the elements of obstructing an officer. Pinkens assured the circuit court that he reviewed the document with his lawyer and that he understood the elements of the offense.

A guilty plea colloquy must include an inquiry sufficient to satisfy the circuit court that the defendant committed the crime charged. *See* WIS. STAT. § 971.08(1)(b). Here, Pinkens confirmed on the Record that he had read the criminal complaint and that the facts in it were true. Additionally, Pinkens's trial lawyer agreed that the circuit court could rely on the facts

alleged in the criminal complaint. The circuit court found a factual basis for the guilty plea. *See* ***State v. Black***, 2001 WI 31, ¶13, 242 Wis. 2d 126, 138, 624 N.W.2d 363, 369 (trial lawyer's stipulation to facts in complaint establishes factual basis for guilty plea).

The Record reflects that Pinkens entered his guilty plea knowingly, intelligently, and voluntarily. *See* WIS. STAT. § 971.08 and ***State v. Bangert***, 131 Wis. 2d 246, 266–272, 389 N.W.2d 12, 23–25 (1986); *see also* ***State v. Hoppe***, 2009 WI 41, ¶32, 317 Wis. 2d 161, 180, 765 N.W.2d 794, 803 (completed plea questionnaire and waiver of rights form helps to ensure a knowing, intelligent, and voluntary plea). The Record reflects no basis for an arguably meritorious challenge to the validity of the plea.

We turn to whether Pinkens could raise an arguably meritorious challenge to his sentence. Sentencing lies within the circuit court's discretion, and our review is limited to determining if the circuit court erroneously exercised its discretion. ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 549, 678 N.W.2d 197, 203. The circuit court must consider the primary sentencing factors of "the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 606, 712 N.W.2d 76, 82. The circuit court may also consider a wide range of other factors concerning the defendant, the offense, and the community. *See* ***id***, 2006 WI App 49, ¶23, 289 Wis. 2d at 606–607, 712 N.W.2d at 82. The circuit court has discretion to determine both the factors that it believes are relevant in imposing sentence and the weight to assign to each relevant factor. ***State v. Stenzel***, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 237, 688 N.W.2d 20, 26. Further, in exercising sentencing discretion, the circuit court must "specify the objectives of the sentence on the [R]ecord. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." ***Gallion***,

2004 WI 42, ¶40, 270 Wis. 2d at 556–557, 678 N.W.2d at 207. "When the exercise of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of the [circuit] court in passing sentence." ***Stenzel***, 2004 WI App 181, ¶7, 276 Wis. 2d at 231, 688 N.W.2d at 23.

The Record here reflects an appropriate exercise of sentencing discretion. The circuit court considered the gravity of the offense. The circuit court explained that, although giving a false name to the police might be viewed in some circumstances as only moderately serious, in this case the offense was aggravated because Pinkens gave the police a series of more than three false names and did so while on extended supervision for a prior felony conviction. The circuit court considered Pinkens's character and took into account that he accepted responsibility for the offense. The circuit court noted with concern, however, that he was twenty-nine years old, that he had three prior felony convictions, and that he had spent most of his adult life either in prison or serving a term of extended supervision. *See* ***State v. Fisher***, 2005 WI App 175, ¶26, 285 Wis. 2d 433, 449, 702 N.W.2d 56, 64 (criminal record spanning substantial time period is evidence of character). The circuit court considered the need to protect the public, stating that Pinkens "continued to commit crimes even while under [community] supervision," and therefore "the need to protect the community here is great."

The circuit court identified protection of the public, punishment, and deterrence as the sentencing goals. The circuit court emphasized that Pinkens's failure to comply with the rules of supervision reflected that he posed an ongoing danger to the public. Additionally, the circuit court explained that Pinkens must be punished because "he really should know better" and the circuit court further expressed hope that the sentence would serve as "additional motivation" for Pinkens to "follow the laws and rules" upon his release from custody. Accordingly, the circuit

court rejected the State's recommendation for a concurrent sentence and Pinkens's request for a time-served disposition, and the circuit court instead imposed 140 days in jail consecutive to any other sentence.

The Record reflects that the circuit court considered relevant factors and properly exercised its discretion to fashion a reasonable sentence. Further, the sentence imposed was not unduly harsh. A sentence is unduly harsh "'only where the sentence 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.'" *See **State v. Grindemann***, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 651, 648 N.W.2d 507, 517 (citation omitted). Upon conviction, Pinkens faced a statutory maximum sentence of nine months in jail and a $10,000 fine. *See* WIS. STAT. §§ 946.41(1), 939.51(3)(a). The penalty selected here was well below the maximum permitted by law. A sentence well within the maximum lawful sentence is presumptively not unduly harsh. *See **Gindemann***, 2002 WI App 106, ¶32, 255 Wis. 2d at 651, 648 N.W.2d at 517. We cannot say that the sentence imposed in this case is disproportionate or shocking. *See **State v. Daniels***, 117 Wis. 2d 9, 22, 343 N.W.2d 411, 417–418 (Ct. App. 1983).

Last, we agree with Haskell that Pinkens could not pursue an appellate challenge to the circuit court order vacating presentence incarceration credit for the three days Pinkens spent in custody after arrest and before he was permitted a personal recognizance bond in this case. Soon after sentencing, the Department of Corrections sought clarification of the sentence credit award, pointing out that the credit awarded in this case duplicated credit awarded in another matter, to which the sentence in this case was made consecutive. The Record shows Pinkens received credit for the three days at issue against a term of reconfinement ordered upon revocation of his

extended supervision for his 2004 criminal convictions. Pinkens is not entitled to dual credit against consecutive sentences. "'The objective with consecutive sentences is to assure that credit is awarded against one, but only one, of the consecutive sentences.'" *See* ***State v. Boettcher***, 144 Wis. 2d 86, 101, 423 N.W.2d 533, 539 (1988) (citation omitted).

Based on our independent review of the Record, no other issues warrant discussion. We conclude that any further proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Dustin C. Haskell, Esq., is relieved of any further representation of Lance Terrell Pinkens on appeal, *see* WIS. STAT. RULE 809.32(3), and we commend him for an unusually thoughtful and well-written no-merit report.

Diane M. Fremgen
Clerk of Court of Appeals