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**DISTRICT I**

May 30, 2014

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

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2013AP2763-CRNM State of Wisconsin v. Ryan Jeffrey Schnell (L.C. #2011CF5670)

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

Ryan Jeffrey Schnell appeals from a judgment of conviction, entered upon his guilty pleas, on one count of possession of a firearm by a felon, one count of felony mistreatment of an animal causing disfigurement, and one count of possession of tetrahydrocannabinol (THC) as a second or subsequent offense. Appellate counsel, J. Dennis Thornton, has filed a no-merit report, pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32

(2011-12).[1] Schnell was advised of his right to file a response, but has not responded. Upon this court's independent review of the record, as mandated by ***Anders***, and counsel's report, we conclude that there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

On July 10, 2011, Wauwatosa police were dispatched to investigate a retail theft complaint at a grocery store. Schnell had been detained by store personnel after paying for some merchandise, but not for items in his pants. The store recovered a package of tenderloin steak, hamburgers, and an air freshener from Schnell's pockets, as well as two small white rocks wrapped in plastic. The police field tested the rocks, which were positive for cocaine.

A detective interviewed Schnell, who admitted he was an opiate addict and gave consent to search the residence he shared with his girlfriend. While searching the sole bedroom, police recovered a black duffle bag with an assault rifle in it and a second bag with several types of bullets. Schnell told police he had been asked by someone named Alex to hold the gun for him.

On August 28, 2011, Wauwatosa police responded to the home of Schnell's grandmother and uncle, who lived next door to Schnell. They complained that items had been moved, food eaten, and money and scrap copper taken while they were away for the weekend. They suspected Schnell of the theft.

On November 16, 2011, police responded to a call regarding an argument between a dog owner and an animal control officer from the Milwaukee Area Domestic Animal Control

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

Commission (MADACC). The MADACC officer had responded to a call about a stray pit bull with injuries. The officer noted the dog had injuries to its eye, neck, and snout, and appeared malnourished. Before the officer could take custody of the dog, its owner arrived to take the dog away. The officer described the owner as choking the dog as he grabbed it and forced his way past the officer, taking the animal a few houses down. The person who had called MADACC identified the dog's owner as Schnell. Police interviewed another neighbor, who said she had observed Schnell burn the dog. Schnell's girlfriend told police that she had noted injuries to the dog's neck and muzzle, and that it was missing a toe nail on one of its rear paws.

On November 20, 2011, police were advised that Schnell had just left his home with the dog. A detective then observed Schnell return to his home, and approached him while he was in his truck in the driveway. As the detective approached, she observed the front seat passenger—who was a minor—hand Schnell a lighter, and she observed Schnell take a hit from a crack pipe. Schnell was arrested for mistreatment of the dog, and the dog was turned over to MADACC. Schnell again consented to a search of his residence, which turned up a bag of copper pieces, jewelry, a computer that did not belong to Schnell, drug paraphernalia, and a marijuana cigarette. Schnell later admitted that he took the copper and jewelry from his relatives' home, the marijuana cigarette was his, and the dog had been injured while in his care.

Schnell was charged with one count of possession of cocaine as a second or subsequent offense, possession of a firearm by a felon, burglary, misdemeanor negligent mistreatment of an animal, disorderly conduct, and another count of possession of cocaine as a second or subsequent offense, all as a repeater. Following the preliminary hearing, an information added a charge of retail theft and possession of THC as a second or subsequent offense, both as a repeater. The

information also elevated the animal abuse charge to felony intentional mistreatment of an animal resulting in disfigurement.

Schnell ultimately resolved the case by plea agreement. He agreed to plead guilty to the felon-in-possession, animal mistreatment, and marijuana counts as charged in the information. In exchange, the State would dismiss and read in the other five counts and dismiss the repeater enhancer on all counts. The State would recommend prison, with the sentence length left to the court. Schnell was free to argue the sentence length. Ultimately, the circuit court sentenced Schnell to the maximum imprisonment: five years' initial confinement and five years' extended supervision for felon-in-possession and eighteen months' initial confinement and twenty-four months' extended supervision for both the animal mistreatment and the marijuana convictions. The three sentences were set consecutive to each other and to any other sentence.

In the no-merit report, counsel first addresses whether the complaint sufficiently stated probable cause, whether it was issued in a timely fashion, and whether the initial appearance was timely. We agree with counsel's conclusion that the complaint sufficiently states probable cause and that it was timely issued. Counsel appears to have considered whether there was a violation of ***County of Riverside v. McLaughlin***, 500 U.S. 44, 56 (1991), which requires a judicial determination of probable cause within forty-eight hours of a warrantless arrest. Schnell was arrested on November 20, 2011, and his initial appearance was not until November 25, 2011. However, we agree with counsel's conclusion that there is no arguable merit to a ***Riverside*** challenge: a ***Riverside*** violation does not deprive the court of competency and nothing about the delay prejudiced Schnell's ability to prepare a defense. *See* ***State v. Golden***, 185 Wis. 2d 763, 769, 519 N.W.2d 659 (Ct. App. 1994).

Counsel next considers whether there is any arguable basis for challenging whether Schnell's pleas were knowing, intelligent, and voluntary. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Schnell completed a plea questionnaire and waiver of rights form, *see* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987), in which he acknowledged that his attorney had explained the elements of the offenses to which he pled. The applicable jury instructions were attached. The form acknowledged the range of imprisonment that Schnell faced and the form, along with an addendum, also specified the constitutional rights he was waiving with his plea. *See* ***Bangert***, 131 Wis. 2d at 262.

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, 683 N.W.2d 14. Of particular note, the circuit court expressly confirmed whether Schnell understood he was giving up the right to litigate pending suppression motions.[2] Schnell personally acknowledged his understanding. Further, the circuit court relied on the complaint, which had charged only misdemeanor negligent mistreatment of animals, to establish the factual basis for Schnell's pleas. However, we have reviewed the complaint and are satisfied that it also includes a sufficient factual basis to support Schnell's plea to intentional mistreatment resulting in disfigurement. Additionally, the circuit court properly informed Schnell of the impact of read-in offenses. *See* ***State v. Straszkowski***, 2008 WI 65, ¶97, 310 Wis. 2d 259, 750 N.W.2d 835.

The plea questionnaire and waiver of rights form and addendum and the court's colloquy appropriately advised Schnell of the elements of his offenses and the potential penalties he faced,

[2] Schnell disputed giving police verbal consent to search his home, claiming coercion, and he sought to suppress evidence obtained in the searches.

and otherwise complied with the requirements of ***Bangert*** and ***Hampton*** for ensuring that a plea is knowing, intelligent, and voluntary. There is no arguable merit to a challenge to the pleas' validity.

Counsel additionally addresses whether the circuit court erroneously exercised its sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a 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 determine which objective or objectives are of greatest importance, *see* ***Gallion***, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the 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, 720 N.W.2d 695. The weight to be given to each factor is committed to the circuit court's discretion. *See* ***Ziegler***, 289 Wis. 2d 594, ¶23.

The circuit court observed that, based on information provided throughout the case, Schnell had committed even more offenses than just the ones that the State had charged. It noted that Schnell had at least three other probation or supervision attempts, and those had all been revoked. The circuit court did consider positive attributes, like the fact that Schnell had completed high school and had some college experience, had a supportive family, had some work experience, and could do well when sober.

Nevertheless, the circuit court noted that seventy to eighty percent of what Schnell had to say to the court was an attempt to minimize his actions. The circuit court considered Schnell to

be dangerous, noting that he was twenty-six years old, had been given opportunities to turn his life around, but instead decided to smoke more crack and marijuana, which caused him to take others—like his grandmother and the dog—down with him. The circuit court explained that it did not impose maximum sentences lightly, but it needed to send a message that behavior like Schnell's would not be tolerated. It explained that the sentences would be consecutive because each offense was distinct and constituted a separate type of harm to the community. The circuit court did, however, make Schnell eligible for the challenge incarceration and substance abuse programs after serving six of his eight years of initial confinement.

The maximum possible imprisonment term Schnell could have received was seventeen years' imprisonment, which is what the court imposed. This sentence is within the range authorized by law. *See* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. Although this is a maximum sentence, the circuit court properly explained its decision. There would be no arguable merit to a challenge to the sentencing court's discretion.[3]

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

Upon the foregoing, therefore,

[3] The circuit court also ordered Schnell to pay $3,000 in restitution, an amount to which Schnell agreed.

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

IT IS FURTHER ORDERED that Attorney J. Dennis Thornton is relieved of further representation of Schnell in this matter. *See* WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*
*Clerk of Court of Appeals*