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DISTRICT I

June 3, 2014

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

2014AP343-CRNM State of Wisconsin v. Vernon Rodney Roberts (L.C. #2012CF4354)

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

Vernon Rodney Roberts appeals from a judgment of conviction, entered upon his guilty pleas, on one count of possession of firearm by a felon and one count of possession of tetrahydrocannabinols (marijuana) as a second or subsequent offense. Appellate counsel, Scott D. Connors, Esq., has filed a no-merit report, pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Roberts 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 no-merit report, we conclude there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

On August 30, 2012, police responded to a 911 call about a group of people firing guns into the air. The caller gave a description of the shooter: a black male wearing a black tank top, black hat, and blue jeans. Officers were on the scene within five minutes of the call.

When police arrived, there were several subjects, but only one, later identified as Roberts, matched the 911 caller's description. Roberts glanced at the police car, turned around, and began walking away from the group. An officer followed, and directed Roberts to stop and get on the ground. As he did, the officer noticed a gun handle sticking out of Roberts's pocket. The officer recovered a 45-caliber semi-automatic gun from Roberts's pocket. A subsequent search incident to arrest also recovered a small, clear, corner-cut of something that field-tested positive for THC. When officers searched the area of the shots-fired complaint, they recovered four casings that appeared to be from the same type of bullet as those in Roberts's gun.

Roberts was charged with one count of possession of a firearm by a felon and one count of possession of THC as a second or subsequent offense. He sought to suppress the gun and marijuana, claiming an invalid stop. After the circuit court denied his motion, Roberts agreed to resolve the case through a plea bargain. In exchange for his guilty pleas, the State would recommend prison time but leave the length of Roberts's sentence to the discretion of the circuit court. The circuit court conducted a plea colloquy with Roberts and accepted his guilty pleas. The circuit court subsequently imposed consecutive sentences of six months' imprisonment for the felon-in-possession charge, and eighteen months' initial confinement and twenty-four months' extended supervision for the marijuana charge.

Counsel briefly addresses whether the circuit court properly denied Roberts's motion to suppress. *See* WIS. STAT. § 971.31(10). Roberts had claimed the stop was invalid because police did not observe him commit any criminal activity.

Officers may conduct a temporary, investigatory stop of a person if there is reasonable suspicion that criminal activity may be afoot. *See* ***State v Miller***, 2012 WI 61, ¶29, 341 Wis. 2d 307, 323–324, 815 N.W.2d 349, 358. There must be specific, articulable facts which, when taken with reasonable inferences therefrom, warrant the police intrusion. *See* ***id.***, 2012 WI 61, ¶29, 341 Wis. 2d at 324, 815 N.W.2d at 358. We consider the totality of the circumstances and focus on the reasonableness of the officers' actions. *See* ***id.***, 2012 WI 61, ¶30, 341 Wis. 2d at 324, 815 N.W.2d at 358.

A circuit court's decision on a motion to suppress evidence presents a mixed question of fact and law. *See* ***State v. Cesarez***, 2008 WI App 166, ¶9, 314 Wis. 2d 661, 668, 762 N.W.2d 385, 388. We do not reverse the circuit court's factual findings unless clearly erroneous, but the application of constitutional principles to those findings is reviewed *de novo*. *See* ***id.***, 2008 WI App 166, ¶9, 314 Wis. 2d at 668, 762 N.W.2d at 388–389.

Our review of the Record satisfies us that the circuit court properly denied the suppression motion. When officers arrived on the scene, they corroborated certain facts offered by the 911 caller, like the presence of a group of people and a particular car. Roberts was the only individual to match the description provided by the caller, and the only one who left the scene when police arrived. There is no arguable merit to a challenge to the circuit court's denial of the suppression motion.

Counsel next addresses whether there is any arguable basis for challenging whether Roberts's pleas were knowing, intelligent, and voluntary. ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12, 20 (1986). Roberts completed a plea questionnaire and waiver of rights form, *see* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827–828, 416 N.W.2d 627, 629–630 (Ct. App. 1987), in which he acknowledged that his attorney had explained the elements of the offenses. Appropriate jury instructions were attached and initialed by Roberts. The form correctly acknowledged the maximum penalties Roberts 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, 389 N.W.2d at 21. The circuit court also 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. Our review of the colloquy satisfies us that it properly 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 also 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 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, 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, 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* ***Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d at 606, 712 N.W.2d at 82.

The circuit court explained that probation was not appropriate because prior probationary sentences had been unsuccessful. It then imposed the maximum sentence for the marijuana charge and a minor penalty for the firearm. The circuit court explained that Roberts had three prior possession charges in the past, each of which ended with a break: one charge was dismissed and read in, one charge resulted only in a fine, and one charge was reduced from a felony to a misdemeanor. The circuit court observed that Roberts is clearly a drug user and other penalties did not help, so the maximum penalty was warranted for the drug offense in this case. Moreover, the possession of marijuana was aggravated by the presence of the firearm. While the circuit court acknowledged that shooting a gun into the air was dangerous, it explained that it was imposing a lower sentence for that offense because Roberts pled guilty and did not struggle with police when they stopped him. The circuit court also thought that the programming Roberts should receive while incarcerated for the longer sentence will benefit him.

The maximum possible sentence Roberts could have received was thirteen and one-half years' imprisonment. The sentence totaling four years' imprisonment is well within the range authorized by law, *see* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 108, 622 N.W.2d 449, 456, and is not so excessive so 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 sentencing court's 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 Scott D. Connors, Esq., is relieved of further representation of Roberts in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals