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

2014AP167-CRNM

State of Wisconsin v. Richie George Bohannon
(L.C. # 2011CF1917)

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

Richie George Bohannon pleaded guilty to one count of being a felon in possession of a firearm, contrary to WIS. STAT. § 941.29(2)(a) (2011-12).¹ He now appeals from the amended judgment of conviction. Bohannon's postconviction/appellate counsel, Andrea Taylor Cornwall, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Bohannon has not filed a response. We have independently reviewed the record

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

and the no-merit report as mandated by *Anders*, and we conclude that there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm.

During a traffic stop, a sheriff's deputy found a pistol containing two hollow-point bullets under the driver's seat of a car driven by Bohannon. Bohannon was charged with being a felon in possession of a firearm, as a repeater. According to the criminal complaint, a recording made while Bohannon was in the back seat of the squad car talking on his cell phone included Bohannon's statement that he had been "caught with the gun in the car."

Bohannon requested a motion hearing concerning "the stop and search," but before that motion could be heard, Bohannon entered a plea agreement with the State. At the plea hearing, trial counsel said that although the motion hearing had been scheduled, "Mr. Bohannon insisted that I bring it in and get the matter resolved." The trial court confirmed with Bohannon that he understood that by entering his guilty plea, he was giving up his right to pursue that motion or other motions, and Bohannon said that he understood.

The State told the trial court that it had agreed to move to dismiss the repeater penalty enhancer in exchange for Bohannon's guilty plea. The State said it had further agreed to recommend that the sentence be consecutive to a four-year reconfinement sentence that Bohannon received in another case. Bohannon was free to argue for an appropriate sentence.

The trial court accepted Bohannon's guilty plea and found him guilty. The parties indicated that they wanted to proceed to sentencing immediately. The trial court sentenced Bohannon to four-and-one-half years of initial confinement and two years of extended

supervision, to be served concurrent with the reconfinement sentence.² The trial court waived the DNA surcharge.

The no-merit report concludes there would be no arguable merit to assert that: (1) the plea was not knowingly, voluntarily, and intelligently entered; and (2) the trial court erroneously exercised its sentencing discretion. This court agrees with postconviction/appellate counsel's thorough 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 postconviction/appellate counsel's description and analysis, we will briefly discuss the identified issues.

We begin with the guilty plea. There is no arguable basis to allege that Bohannon's guilty 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 Bohannon'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. See § 971.08; *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14; *Bangert*, 131 Wis. 2d at 266-72.

² The trial court awarded Bohannon ninety-five days of sentence credit, as requested by his trial counsel. The Department of Corrections questioned that number, as only eighty-five days elapsed between the date of Bohannon's arrest and his sentencing. The trial court subsequently amended the judgment of conviction to reflect eighty-five days of sentence credit.

The trial court referenced the guilty plea questionnaire that Bohannon completed with his counsel, and the trial court also went through the elements of the crime with Bohannon. The trial court told Bohannon that it was not bound by the parties' recommendations, and it reiterated the maximum sentence and fine that could be imposed. Both parties stipulated that the facts in the complaint provided a factual basis for the plea, and Bohannon personally agreed that the facts in the complaint were true. Also, as noted above, the trial court confirmed with Bohannon that he was giving up his "right to raise any types of motions or defenses, including the motion that your attorney was going to bring for that date we had coming up."

Based on our review of the record, we conclude that the plea questionnaire, waiver of rights form, Bohannon's conversations with his trial counsel, and the trial court's colloquy appropriately advised Bohannon 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 Bohannon'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).

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 recognized that this was “a serious offense” that involved Bohannon being “out in the community with a loaded firearm.” The trial court also observed that the pistol contained hollow-point bullets, which “are intended for the sole purpose of causing the maximum amount of damage.” The trial court discussed Bohannon’s prior conviction for felony murder as a party to a crime—a crime for which he was on extended supervision at the time of this offense. The trial court said that “an incarceration period” was necessary “to protect the public.” The trial court explained that it was choosing to impose a concurrent sentence, “recognizing how long you are serving already for the revocation portion of it.”

Our review of the sentencing transcript leads us to conclude that 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. Bohannon benefitted from the elimination of the repeater penalty enhancer, and the trial court imposed a concurrent sentence that added only six months of initial confinement time beyond the time that Bohannon will serve on the revocation sentence. We discern no erroneous exercise of discretion.

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

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Andrea Taylor Cornwall is relieved of further representation of Bohannon in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals