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

2014AP743-CRNM State of Wisconsin v. Avery Grant Staples
(L.C. #2013CM878)

Before Brennan, J.

Avery Grant Staples appeals from a corrected judgment of conviction for misdemeanor retail theft and misdemeanor bail jumping, both as a repeater. *See* WIS. STAT. §§ 943.50(1m)(b) & (4)(a), 946.49(1)(a), 939.62(1)(a) (2011-12).¹ Appellate counsel, Assistant State Public Defender Andrea Taylor Cornwall, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32, to which Staples has not responded. After independently reviewing the record and the no-merit report, we conclude there are no issues of

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

arguable merit that could be raised on appeal and summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

According to the complaint, security personnel at a Walmart store observed Staples take bottles of shampoo and conditioner without paying for them. When Staples was stopped, he had approximately one hundred and forty dollars worth of stolen Walmart property.

The complaint further alleged that at the time of the offense, Milwaukee County Case No. 2012CM5732 was an open case against Staples with charges of retail theft and possessing drug paraphernalia, both as a repeat offender. Staples was released in that case with conditions of bond that included not committing any new crimes—and those conditions were in effect at the time of alleged retail theft at Walmart.

Lastly, the complaint included information reflecting that Staples was previously convicted of the felony offense of armed robbery and alleging that he satisfied the requirements for the repeater enhancer to apply.

Consequently, Staples was charged in this case with misdemeanor retail theft and misdemeanor bail jumping, both as a repeater. Pursuant to plea negotiations, he agreed to plead guilty to both counts. In exchange, the State moved to dismiss and read in charges against Staples in Milwaukee County Case No. 2012CM5732. The State explained that it would then make one of two sentencing recommendations: (1) if Staples complied with drug treatment and had no dirty urine screens, it would recommend two years probation with a prison sentence, imposed and stayed, and six to nine months in jail as a condition of probation; or (2) if Staples missed treatment or had a dirty urine screen, the State would recommend prison, leaving the amount of time up to the circuit court.

The circuit court accepted Staples's pleas and dismissed the two charges against him in Milwaukee County Case No. 2012CM5732. It sentenced Staples to two consecutive sentences of eighteen months of initial confinement and six months of extended supervision.

In her no-merit report, counsel identifies two potential issues for appeal: whether the circuit court properly accepted Staples's guilty pleas and whether it appropriately exercised its sentencing discretion. We will address each issue in turn.

To be valid, a guilty plea must be knowing, intelligent, and voluntary. See *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Staples completed a plea questionnaire and waiver of rights form and an addendum, see *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987), which included a listing of the elements for bail jumping and retail theft. Additionally, the circuit court conducted a plea colloquy addressing Staples's understanding of the charges against him, the penalties he faced, and the constitutional rights he was waiving by entering pleas, see WIS. STAT. § 971.08; *Bangert*, 131 Wis. 2d at 266-72. The circuit court also explicitly confirmed Staples's understanding that the judge was not part of the plea agreement, which Staples told the court meant "[the judge] can impose his own sentence." See *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. This court concludes that there would be no arguable merit to challenging the validity of Staples's pleas.

The second issue counsel raises is 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. The primary objectives of a sentence include protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. A sentencing court should identify the objectives of

greatest importance and explain how a particular sentence advances those objectives. *Id.* The necessary amount of explanation “will vary from case to case.” *State v. Brown*, 2006 WI 131, ¶39, 298 Wis. 2d 37, 725 N.W.2d 262 (citation omitted).

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 it 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 court’s discretion. *See Gallion*, 270 Wis. 2d 535, ¶41.

On the day Staples was to be sentenced, his attorney asked for an adjournment. Counsel explained that Staples was charged in Milwaukee County Case No. 2013CM3174 with new counts of retail theft and bail jumping, which were alleged to have occurred while Staples was out on bail. Case No. 2013CM3174 was scheduled for a pretrial conference the same day as Staples’s sentencing, and counsel advised that the district attorney in the new case had offered to resolve it with the underlying case. The circuit court denied the adjournment, explaining: “That’s nice but I’m not adjourning anybody’s case because they picked up another case. That would encourage people to go out and commit new crimes while awaiting sentencing. That’s not a reason for not going forward.”²

Because Staples had been taken into custody on the charges in Milwaukee County Case No. 2013CM3174 and therefore was not compliant with his drug treatment, the State

recommended that Staples be sentenced to prison, leaving the amount of time up to the circuit court. It detailed the circumstances surrounding the charges in Milwaukee County Case No. 2012CM5732, where Staples had entered a Walgreens store and was caught by security personnel with thirteen containers of women's deodorant, with a retail value of approximately sixty-two dollars. At that time, Staples reported to the police that he sold the deodorant on the street to support his drug habit. During the process of the arrest, he was found with drug paraphernalia. The State also set forth the details of the underlying Walmart theft and the rest of Staples's lengthy criminal history, which included an armed robbery conviction and numerous retail-theft convictions.

In the statement he made at sentencing, Staples told the circuit court about his struggle to stay clean. Regarding the charges against him in Milwaukee County Case No. 2013CM3174, Staples explained that he slipped when he went out and attempted the retail theft but that he did confess and took full responsibility for his actions.

The circuit court sentenced Staples to the maximum time available on the two charges to which he pled: two years of imprisonment on each. *See* WIS. STAT. §§ 943.50(1m)(b) & (4)(a), 946.49(1)(a), 939.51(3)(a), 939.62(1)(a); *see also State v. Lasanske*, 2014 WI App 26, ¶¶8-12, 353 Wis. 2d 280, 844 N.W.2d 417 (explaining bifurcation of enhanced misdemeanor sentences). The circuit court explained that while misdemeanor offenses are by definition less serious offenses in the State of Wisconsin, the charges against Staples were nevertheless aggravated:

² We see no issue of arguable merit related to the circuit court's denial of Staples's request for an adjournment. *See State v. Leighton*, 2000 WI App 156, ¶27, 237 Wis. 2d 709, 616 N.W.2d 126 ("The
(continued)

They're aggravated by their cumulation. Then these two charges and the read in, the bail jumping certainly is aggravated because that occurred while he was out released on bail on case 5732. And yet he committed another retail theft while he's on bail for retail theft.

In reflecting on Staples's "miserable record," the circuit court concluded that the public is entitled to be protected from his conduct and explained that the public includes merchants. The court decided that incarceration would give Staples the opportunity to work on his drug problem.

The record demonstrates that the circuit court followed the dictates of *Gallion* at the sentencing hearing. Further, the circuit court's sentence was not so excessive that it shocks the public's sentiment. See *Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

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

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Assistant State Public Defender Andrea Taylor Cornwall is relieved of further representation of Avery Grant Staples in this matter. See WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals

decision whether to grant or deny an adjournment request is left to the [circuit] court's discretion and will not be reversed on appeal absent an erroneous exercise of discretion.").