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

2014AP832-CRNM State of Wisconsin v. Lavon J. Motley
(L.C. #2013CF000589)

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

Lavon J. Motley pleaded guilty to one count of armed robbery with threat of force, contrary to WIS. STAT. § 943.32(2) (2011-12).[1] He now appeals from the judgment of conviction. Motley'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. Motley has not filed a response. We have independently reviewed the record and the no-merit

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

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.

According to the criminal complaint, Motley was involved in three criminal incidents over the course of two months, shortly after he turned seventeen. The complaint alleged that on November 30, 2012, Motley approached a seventeen-year-old girl from behind as she was walking home from school, put a knife to her neck, took her cell phone from her pocket, and ran away. Motley was charged with one count of robbery with use of force for that crime. The complaint further alleged that on December 5, 2012, Motley took a purse from a woman's shoulder and ran away. Motley was charged with one count of theft from person for that offense. Finally, the complaint alleged that on January 17, 2013, Motley approached a thirteen-year-old boy as he was walking to a bus stop. Motley told the boy to empty his pockets and, when the boy kept walking, Motley "put a black semi-automatic handgun up to [the boy's] left temple." The boy gave Motley his cell phone and Motley ran away. Motley was charged with one count of armed robbery with threat of force for that incident.

Motley was bound over after a preliminary hearing. The only motion Motley filed challenged the amount of bail imposed. Motley subsequently entered a plea agreement with the State, pursuant to which he pled guilty to armed robbery with threat of force for the January 17, 2013 incident, and the other two counts were dismissed and read in. The State agreed to recommend a prison sentence and leave the length of that sentence to the trial court's discretion.

Motley was free to argue for an appropriate sentence. In addition, Motley agreed to pay full restitution in all three cases.[2]

The trial court accepted Motley's guilty plea and found him guilty. No presentence investigation report was prepared, but the parties and the court reviewed three psychological reports that had been completed in 2010 and 2011, when Motley faced juvenile charges.

The trial court sentenced Motley to twelve years of initial confinement and six years of extended supervision. The trial court ordered that Motley was eligible for the Challenge Incarceration Program after serving nine years of initial confinement, and eligible for the Substance Abuse Program after serving ten years of initial confinement. The trial court ordered Motley to provide a DNA sample but waived the DNA surcharge.

Attorney Cornwall was appointed to represent Motley in postconviction and appellate proceedings. She filed a no-merit report that 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.

[2] Ultimately, only two victims sought restitution and Motley agreed to their restitution requests, which totaled $743.96.

We begin with the guilty plea. There is no arguable basis to allege that Motley'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 plea colloquy that addressed Motley's understanding of the plea agreement and the charges to which he was pleading guilty, the penalties he faced, and the constitutional rights he was waiving by entering his plea.[3] *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.

The elements of the crime were stated on the guilty plea questionnaire, and the trial court also went over those elements with Motley. The trial court asked Motley about the constitutional rights he was giving up, again referencing the rights stated on the guilty plea questionnaire. The

[3] We recognize that the trial court did not comply with the procedural mandate of WIS. STAT. § 971.08(1)(c), which requires the court, before accepting a guilty plea, to:

> Address the defendant personally and advise the defendant as follows: "If you are not a citizen of the United States of America, you are advised that a plea of guilty or no contest for the offense with which you are charged may result in deportation, the exclusion from admission to this country or the denial of naturalization, under federal law."

See ***State v. Douangmala***, 2002 WI 62, ¶21, 253 Wis. 2d 173, 646 N.W.2d 1 (explaining that § 971.08(1)(c) "'not only commands what the court must personally say to the defendant, but the language is bracketed by quotation marks, an unusual and significant legislative signal that the statute should be followed to the letter'") (citation omitted). To be entitled to plea withdrawal on this basis, however, Motley would have to show "that the plea is likely to result in [his] deportation, exclusion from admission to this country or denial of naturalization." *See* § 971.08(2). There is no indication in the record that Motley can make such a showing, and the no-merit report adds: "Trial counsel told the court at sentencing that Mr. Motley was born and raised in Milwaukee. Therefore, Mr. Motley is not subject to any immigration consequence as a result of his plea." (Record citation omitted.)

trial court confirmed with Motley that he knew the trial court was free to impose the maximum sentence, and the trial court stated the maximum sentence and fine that could be imposed.

The trial court also reviewed the facts of all three crimes and noted that while the first two charges were being dismissed, they would be taken into account at sentencing. Motley agreed that the criminal complaint accurately stated the facts of all three crimes, except he said that he did not point the gun at the boy and it was a "BB gun."[4] The trial court found there was a factual basis for the charges.

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

[4] When trial counsel stipulated to the facts in the criminal complaint supporting count three, he said the only exception was that Motley "indicates that it was a pellet gun, not an actual gun."

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 Motley had a juvenile record and that numerous professionals had tried to assist him over the years.[5] The trial court acknowledged that Motley had some "mental issues" and intellectual challenges. The trial court also said that Motley "is dangerous and frightening to others" and has "been so defiant and so angry" that his previous correctional experiences had not prevented him from committing additional crimes. The trial court concluded that it had "to take him away for a while" so that "with the additional maturity by the time he gets out of prison and with the additional education" he gets in prison, he can "choose[] the right path." The trial court said that for the protection of the community, "a substantial, serious, significant amount of time is absolutely required here."

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

[5] The State said that Motley was being supervised for a juvenile offense at the time he committed these three offenses.

that the sentence was excessive. *See* ***Ocanas***, 70 Wis. 2d at 185. Motley benefitted from the reduction in charges, and the sentence imposed was less than half of the forty-year sentence that could have been imposed. We discern no erroneous exercise of discretion. *See* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449 ("A sentence well within the limits of the maximum sentence is unlikely to be unduly harsh or unconscionable.").

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 Attorney Andrea Taylor Cornwall is relieved of further representation of Motley in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals