OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

January 27, 2015

To:

Hon. Charles F. Kahn, Jr.
Milwaukee County Circuit Court
901 N. 9th St.
Milwaukee, WI 53233

John Barrett, Clerk
Milwaukee County Circuit Court
821 W. State Street, Room 114
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Mark A. Schoenfeldt
Attorney at Law
135 W. Wells St., Ste. 604
Milwaukee, WI 53203

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Glen H. Harris, #580767
Racine Youthful Offender Corr. Facility
P.O. Box 2500
Racine, WI 53404-2500

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

2014AP631-CRNM	State of Wisconsin v. Glen H. Harris (L.C. # 2012CF4604)
2014AP632-CRNM	State of Wisconsin v. Glen H. Harris (L.C. # 2012CF4630)

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

Glen N. Harris appeals from judgments of conviction, entered on his guilty pleas, to two counts of burglary as a party to a crime, contrary to WIS. STAT. §§ 943.10(1m)(a) and 939.05 (2011-12).[1] Harris's appellate lawyer, Mark A. Schoenfeldt, has filed a no-merit report pursuant

---

[1] By order dated April 22, 2014, we consolidated these two appeals for briefing and disposition purposes.

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

to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32, to which Harris has not responded. We have independently reviewed the record 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 the judgments.

In these two cases, Harris was charged with a total of three burglaries as a party to a crime. The criminal complaints alleged that the crimes were committed on August 23, 2011; September 11, 2012; and September 12, 2012, when Harris was nineteen and twenty years old. Harris entered a plea agreement with the State, pursuant to which he agreed to plead guilty to the August 23, 2011 and the September 11, 2012 burglaries. In exchange, the State agreed to dismiss and read in the September 12, 2012 burglary, as well as two misdemeanor charges (battery and criminal damage to property) in Milwaukee County Circuit Court Case No. 2012CM2198. The State further agreed to recommend a global sentence of eighteen months of initial confinement and two years of extended supervision.

The trial court conducted a plea colloquy with Harris, accepted his guilty pleas, and found him guilty. It also ordered a presentence investigation (PSI) report. At sentencing, Harris mentioned that he did not intend to steal the tire rims that were the basis for the August 23, 2011 burglary conviction. The trial court asked Harris follow-up questions and expressed concern about proceeding. The trial court suggested that perhaps Harris should have the opportunity to instead plead guilty to the September 12, 2012 burglary that had been dismissed and read in. Ultimately, the sentencing was rescheduled and at that rescheduled hearing, the parties told the trial court that they had reached an agreement pursuant to which Harris would withdraw his guilty plea to the August 23, 2011 burglary (although that count would still be dismissed and read in) and would instead enter a guilty plea to the September 12, 2012 burglary. His

conviction for the September 11, 2012 burglary would remain unchanged. The trial court conducted a plea colloquy with Harris, found him guilty of the September 12, 2012 burglary, and ordered that the August 23, 2011 burglary be dismissed and read in, consistent with the parties' agreement. The trial court then proceeded with sentencing.

The PSI report recommended two concurrent sentences of two-to-three years of initial confinement and three-to-four years of extended supervision. The State urged the trial court to sentence Harris consistent with the plea bargain, while the defense suggested that two concurrent sentences of initial confinement between eighteen months and three years, followed by two-to-three years of extended supervision, would be appropriate.

The trial court said that based on Harris's juvenile and criminal history, the numerous chances he had been given in the past, and his dangerousness, a longer sentence was necessary to protect the public. It imposed two consecutive sentences of five years of initial confinement and five years of extended supervision. The trial court ordered that Harris was eligible for the Challenge Incarceration Program after completing his first five-year period of initial confinement. The trial court also said that Harris would be eligible for the Wisconsin Substance Abuse Program after serving the first five-year period of initial confinement and two years of the second five-year period of initial confinement. The trial court ordered a total of $1200 in restitution to two victims, based on restitution requests they filed with the court.

Harris's postconviction/appellate lawyer filed a postconviction motion challenging the imposition of the DNA surcharge in both cases. The trial court granted the motion after

concluding that "the record does not support the imposition of the DNA surcharge" in either case.[2]

Harris's postconviction/appellate lawyer subsequently filed a no-merit report that identified four issues: (1) whether Harris's pleas were knowing and voluntary; (2) whether there was a factual basis for the guilty pleas; (3) whether the trial court erroneously exercised its sentencing discretion "by imposing an excessive sentence"; and (4) whether Harris was denied the effective assistance of trial counsel. We agree with the no-merit report's conclusion that a challenge based on any of those issues would lack arguable merit, and we will briefly address several of those issues.[3]

We begin our analysis with the guilty plea colloquies concerning the two crimes of which Harris was ultimately convicted.[4] There is no arguable basis to allege that Harris's pleas were not knowingly, intelligently, and voluntarily entered. *See* ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). He 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), and the trial court conducted thorough plea colloquies addressing Harris's understanding of the charges against him, the penalty he faced, and the constitutional rights he was waiving by entering his

---

[2] The Honorable M. Joseph Donald granted the postconviction motion.

[3] Like postconviction/appellate counsel, we have not identified any issues of arguable merit related to trial counsel's performance, and we will not further discuss that issue.

[4] As noted, the colloquy on the September 12, 2012 crime was held immediately before sentencing, after the parties agreed to have Harris plead guilty to the September 12, 2012 crime instead of the August 23, 2011 crime.

pleas, *see* WIS. STAT. § 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.[5]

The trial court discussed with Harris the fact that three of the charges were being dismissed and read in. It went through the maximum penalties for burglary, and it told Harris what the State would have to prove if the cases went to trial. The trial court discussed the constitutional rights that Harris was waiving and also referenced the guilty plea questionnaires and waiver of rights forms, to which the jury instructions for burglary and party-to-a-crime liability were attached. The trial court also discussed party-to-a-crime liability and the effect of having the crimes dismissed and read in. Harris acknowledged that his lawyer had gone through the forms with him and indicated that he understood the legal rights he was giving up. The trial court reviewed the facts alleged in the three criminal complaints, and the parties stipulated that the court could use the facts in the criminal complaints as a factual basis for the convictions. When Harris changed his plea from the August 23, 2011 crime to the September 12, 2012 crime, the trial court again discussed the facts of the September 12, 2012 crime with Harris. The guilty

---

[5] 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, Harris 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 Harris can make such a showing.

plea questionnaires, waiver of rights forms, Harris's discussions with his lawyer, and the trial court's thorough colloquies with Harris complied with the requirements of ***Bangert*** and ***Hampton*** for ensuring that the pleas were knowing, intelligent, and voluntary. There would be no arguable merit to a challenge to the validity of the pleas and the record discloses no other basis to seek plea withdrawal.

The second issue raised in the no-merit report is whether there was a factual basis for the guilty pleas. The criminal complaints provided a factual basis for the September 11, 2012 and September 12, 2012 crimes, as discussed in detail in the no-merit report. Further, the trial court also asked Harris questions about the crimes that confirmed there was a factual basis for the charges.

The third issue in the no-merit report concerns Harris's sentence, which was higher than recommended by the State, the defense, and the PSI writer. 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. ***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, as detailed in the no-merit report. The trial court gave Harris credit for pleading guilty to the burglaries, and it noted that no one was physically harmed during the burglaries. The trial court expressed concern, however, with Harris's problems with anger management, noting that the alleged facts for the dismissed and read-in misdemeanor crimes included Harris taking a door off its hinges, slamming it on the counter, and breaking the windows of his stepfather's car.[6] The trial court recognized that Harris had been given numerous chances for rehabilitation in the years since he was adjudicated delinquent for numerous offenses and found guilty as an adult for battering his sister. The trial court said that Harris was in the category of people who are "really frightening and dangerous and could really cause some serious problems in the future." The trial court said that the PSI writer's recommendation was "way too low." The trial court said it had to protect the public from Harris and "give [him] enough time to mature" and learn not to hurt others "by stealing, by breaking into their home or by [his] anger issues." The trial court explained that substantial extended supervision was also warranted, and it said that because the sentences were consecutive, Harris would be on extended supervision for a total of ten years. We conclude that there would be no merit to assert that the trial court erroneously exercised its sentencing discretion.

---

[6] The PSI report indicated that Harris had been diagnosed with "intimate explosive disorder" and had, as a juvenile, been placed in a group home and had received wraparound care to address his needs.

We are also unconvinced that a challenge to the severity of the sentence would have merit. While the trial court imposed a total term of initial confinement longer than that recommended by the parties, the trial court's total sentence of ten years of initial confinement and ten years of extended supervision was not so excessive that it shocks the public's sentiment. *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.").[7] Given Harris's significant juvenile and criminal history and the dismissed charges that were read in, we cannot say that the sentence would "shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances."[8] *See* ***Ocanas***, 70 Wis. 2d at 185. For these reasons, there would be no arguable merit to a challenge to the trial court's sentencing discretion and the severity of the sentence.

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

Upon the foregoing, therefore,

IT IS ORDERED that the judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

---

[7] Harris could have been sentenced to a total of twenty-five years, including fifteen years of initial confinement.

[8] We also note that the trial court declared Harris eligible for the Challenge Incarceration Program and the Wisconsin Substance Abuse Program after specified periods of time. While there is no guarantee that Harris will be able to participate in these programs, he may have the opportunity to be released before serving the full second term of initial confinement.

IT IS FURTHER ORDERED that Attorney Mark A. Schoenfeldt is relieved of further representation of Harris in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals