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**DISTRICT II**

February 4, 2015

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

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2013AP2656-CRNM      State of Wisconsin v. Thomas J. Dormer (L.C. # 2012CF36)

Before Brown, C.J., Reilly and Gundrum, JJ.

Thomas J. Dormer appeals from a judgment of conviction entered upon his no contest plea to armed robbery as a party to the crime, and from an order denying his postconviction motion for sentence modification. Dormer's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12),<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). Dormer received a copy of the report, was advised of his right to file a response, and elected not to do so. Pursuant to this court's October 16, 2014 order, counsel has filed a supplemental no-merit report

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

concerning a sentence credit issue identified by this court. Upon consideration of the no-merit report, supplemental no-merit report and an independent review of the record, we conclude that the judgment and order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Dormer was charged with three separate counts of armed robbery as a party to the crime, and one count of obstructing an officer. According to the criminal complaint, over the course of less than one month, Dormer and his codefendants entered three separate businesses and forced employees to remove money from their cash registers at gun point. Pursuant to a plea agreement, Dormer pled no contest to one count of armed robbery and the remaining three counts were dismissed and read in. At sentencing, the trial court imposed a twelve-year bifurcated sentence consisting of four years of initial confinement followed by eight years of extended supervision. Thereafter, Dormer, by counsel, filed a postconviction motion for sentence modification, which was denied by the court in a lengthy written opinion.

The no-merit report first addresses whether Dormer's no contest plea was knowingly, voluntarily, and intelligently entered. The record shows that the trial court engaged in an appropriate colloquy and made the necessary advisements and findings required by WIS. STAT. § 971.08(1)(a), *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. The trial court ascertained that Dormer understood the maximum penalty, plea agreement and that the court was not bound by the agreement or the parties' recommendations. The court reviewed with Dormer the elements of armed robbery and PTAC liability, and ensured that he understood how his actions satisfied those elements. The court ascertained Dormer's understanding of the constitutional rights waived by and the direct consequences of his no contest plea. The trial court also drew Dormer's

attention to the plea questionnaire and waiver of rights form filed with the court, and ascertained that Dormer had reviewed and signed the document and understood its contents. *See State v. Hoppe*, 2009 WI 41, ¶¶30-32, 42, 317 Wis.2d 161, 765 N.W.2d 794 (although a plea questionnaire and waiver of rights form may not be relied upon as a substitute for a substantive in-court personal colloquy, it may be referred to and used at the plea hearing to ascertain the defendant's understanding and knowledge at the time the plea is taken). The court properly ensured that there was a factual basis for Dormer's plea, and explained to him the significance of his read-in offenses. There is no arguable merit to a claim that the circuit court failed to fulfill its obligations or that Dormer's plea was anything other than knowing, intelligent, and voluntary.

The no-merit report next addresses whether the trial court erroneously exercised its sentencing discretion. It is a well-settled principle of law that sentencing is committed to the circuit court's discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. Our review is limited to determining whether the court erroneously exercised that discretion. *See id.* The sentencing court is generally afforded a strong presumption of reasonability, and if our review reveals that discretion was properly exercised, we follow "a consistent and strong policy against interference" with the circuit court's sentencing determination. *Id.*, ¶18 (quoted source omitted).

In fashioning the sentence, the trial court considered the seriousness of the offense, the defendant's character and history, and the need to protect the public. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The court emphasized the severe impact on the victims, who felt intimidated and terrified. The court cited to the victim's sentencing statement describing her extreme fear, terror and panic: "She talked about being a business owner for longer than you've been alive, and yet, how she will never be the same again, how she

daily relives these events.” The court acknowledged that the weapon was an inoperable air-soft pellet gun, but explained that this was not particularly mitigating because the victims were unaware of the gun’s nature.

The court acknowledged that Dormer had a number of positive character traits as evidenced by his lack of a prior criminal record, the progress he made before sentencing in the 180-Degree program, his history of helping other people and his demonstrated ability to “do the right thing.” The court characterized Dormer as a young man with strong community support, “a God-given determination” and the ability to learn from his mistakes. The court considered Dormer’s mental health issues and rehabilitative needs. The court rejected probation as insufficient to protect the public, unduly depreciative of the nature of the offense, and inconsistent with its articulated sentencing objectives of punishment and deterrence. *See Ziegler*, 289 Wis. 2d 594, ¶23 (The weight to be given to each factor is committed to the circuit court’s discretion). The court stated:

I thought long and hard about how long should this sentence be. I gave [your co-defendant] a ten-year sentence, three years of initial confinement followed by seven years of extended supervision. He was involved in two of these robberies. He did not plan them, but he did conceal his identity, he had a weapon and he threatened; but you were the ring leader, and although you have done a lot to show that you’re willing to move forward from this, to give you a sentence less than what I gave him would also unduly diminish the seriousness of this offense.

The trial court’s sentence had a rational and explainable basis. *See Gallion*, 270 Wis. 2d 535, ¶76. Further, Dormer’s sentence is well within the range authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive as to shock the public’s sentiment, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There would be no arguable merit to a challenge to the sentencing court’s exercise of discretion.

Similarly, there is no arguably meritorious challenge to the trial court's summary decision and order denying Dormer's postconviction motion. The postconviction motion alleged that the sentencing court erroneously exercised its discretion by (1) imposing a sentence that was unduly harsh and unconscionable, and (2) finding Dormer ineligible for the Challenge Incarceration and Substance Abuse programs. The trial court's nine-page written decision restated the variety of proper factors relied on at sentencing and correctly noted that the mitigating facts asserted in Dormer's postconviction motion were all explicitly considered at the time of sentencing. The trial court explained that it would not hold a hearing on the postconviction motion because Dormer failed to allege a new factor under *State v. Harbor*, 2011 WI 28, 333 Wis. 2d 53, 797 N.W.2d 828. Because the record conclusively demonstrates that Dormer is not entitled to relief and given the trial court's lengthy postconviction decision addressing Dormer's non-evidentiary arguments, any argument challenging its postconviction decision would be wholly frivolous. See *McCoy v. Court of Appeals of Wis.*, 486 U.S. 429, 438-39 (1988).

Finally, as explained in our October 16, 2014 order for a supplemental no-merit report, the sentencing court noted that Dormer appeared to be entitled to "roughly two weeks" of credit for time spent in pre-trial custody, and trial counsel stated that he would calculate and submit the amount of credit requested to the court. Because it appeared that Dormer never received this credit, we directed appellate counsel to respond. On December 30, 2014, appellate counsel filed a supplemental no-merit report asserting that he filed a motion to correct sentence credit which was granted by the trial court. In support, counsel has attached an amended judgment of conviction reflecting that on December 16, 2014, the trial court awarded Dormer fourteen days of sentence credit.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment and order, and discharges appellate counsel of the obligation to represent Dormer further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Scott A. Szabrowicz is relieved from further representing Thomas J. Dormer in this matter. *See* WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*