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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

March 9, 2015

To:

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

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

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

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

Kaitlin A. Lamb
Assistant State Public Defender
735 N. Water St., Ste. 912
Milwaukee, WI 53202

Dashawn Turner
4018 W. Lisbon Ave.
Milwaukee, WI 53208

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

2014AP1098-CRNM State of Wisconsin v. Dashawn Turner (L.C. #2013CF2207)

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

Dashawn Turner pled guilty to one count of robbery with use of force as a party to a crime, contrary to WIS. STAT. §§ 943.32(1)(a) and 939.05 (2013-14).[1] He now appeals from the judgment of conviction. Turner's postconviction/appellate counsel, Kaitlin A. Lamb, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Turner has not filed a response. We have independently reviewed the record and the

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

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.

According to the criminal complaint, sixteen-year-old Turner and several other youths went out looking for victims to rob. Turner approached a woman and removed her purse from her body by lifting the purse strap over her head. Turner then dropped the purse and another youth picked it up and ran away. One of the youths tripped the woman and "pushed her to the ground" as she tried to pursue the youth with the purse. Turner later turned himself in and gave a statement to a detective in which he admitted his involvement in the crime and said "that he felt bad about robbing the girl."

Turner was charged with the aforementioned crime and counsel was appointed. The only pretrial motions filed on Turner's behalf related to conditions of bail. Turner, who had no prior juvenile or criminal record, entered a plea agreement with the State. In exchange for Turner's guilty plea, the State agreed to recommend that the trial court: impose a sentence of two years of initial confinement and one year of extended supervision, stay that sentence, and place Turner on probation for three years with eight months of condition time in the House of Correction. Turner was free to argue for a different sentence.

The trial court accepted Turner's guilty plea, found him guilty, and immediately proceeded to sentencing. The trial court imposed a prison sentence of three-and-a-half years of initial confinement and three years of extended supervision. The trial court stayed that sentence and placed Turner on probation for three-and-a-half years, with ten months of condition time. The trial court also declared Turner eligible for the Challenge Incarceration Program. The trial

court ordered Turner—a first-time felon—to provide a DNA sample and pay the surcharge and costs associated with collecting and maintaining that DNA sample.[2]

Lamb was appointed to represent Turner 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.

We begin with the guilty plea. There is no arguable basis to allege that Turner'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). Attached to those documents was an addendum reciting additional understandings, such as the fact that Turner was giving up his "right to challenge the constitutionality of any police action." The printed jury instructions for both robbery by use of force and party-to-a-crime liability were also attached. The trial court conducted a plea colloquy that addressed Turner's understanding of the plea

[2] This is a valid reason to impose the DNA surcharge, so there would be no merit to challenge the trial court's exercise of discretion. *See* ***State v. Cherry***, 2008 WI App 80, ¶10, 312 Wis. 2d 203, 752 N.W.2d 393 (One factor for trial court to consider when deciding whether to impose the DNA surcharge (continued)

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 trial court referenced the guilty plea questionnaire that Turner completed with his trial counsel, and the trial court summarized the elements of the crime for Turner. The trial court also described party-to-a-crime liability and Turner indicated he understood that because he helped others commit a crime, he was "guilty of the whole thing … as if he committed the whole thing himself." The trial court confirmed with Turner that he knew the trial court was free to impose the maximum sentence on each charge, and it reiterated the maximum sentences and fines that could be imposed. Both parties stipulated that the facts in the complaint provided a factual basis for the plea, and Turner personally agreed that the facts in the complaint were true. The trial court also discussed the crime with Turner and observed that force was shown both

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is "whether the defendant has provided a DNA sample in connection with the case so as to have caused DNA cost.").

[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, Turner 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 Turner can make such a showing, and the no-merit report states that "[n]othing suggests that Mr. Turner is not a United States citizen."

when Turner removed the woman's purse and when the co-defendant tripped her. The trial court also confirmed that even though Turner later regretted the robbery, he did intend to steal the purse when he first took it.

Based on our review of the record, we conclude that the plea questionnaire, waiver of rights form and attached jury instructions, Turner's conversations with his trial counsel, and the trial court's colloquy appropriately advised Turner 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 Turner'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 Turner had committed a crime that was "really dangerous, frightening and vicious." The trial court noted that Turner, who was sixteen when he committed the crime, did not have a juvenile or adult criminal record, but expressed concern that Turner may have been seen as a leader by the other youths who committed the crime with him. The trial court emphasized the need "to send a message to the others" that they cannot rob people, noting that Turner's classmates would "know that that nice guy Dashawn is not with us this year because he is doing time in jail." The trial court said that it was willing to put Turner on probation, but only if it imposed and stayed a "substantial" sentence that would "keep Mr. Turner from getting himself sent to prison."

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. The trial court could have imposed ten years of initial confinement and five years of extended supervision. Instead, it imposed about a third of those maximums and placed Turner on probation. 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 Kaitlin A. Lamb is relieved of further representation of Turner in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals