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

2014AP2068-CRNM	State of Wisconsin v. Michael M. Husslein
2014AP2069-CRNM	(L.C. # 2013CF002523)
	(L.C. # 2013CF003785)

Before Brennan, J.

Michael M. Husslein entered guilty pleas in two separate criminal cases to four different misdemeanors, all with the domestic abuse repeater penalty enhancer that increases the potential sentence for each crime by two years. *See* WIS. STAT. § 939.621(1)(b) & (2) (2013-14).¹ He now appeals from the judgments of conviction in the two cases, which have been consolidated for appeal. Husslein's postconviction/appellate counsel, Randall E. Paulson, filed a no-merit

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

report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32.² Husslein has not filed a response. 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.

According to the criminal complaint in the first case, Husslein and his live-in girlfriend had an argument that led the girlfriend to move out. Over the next two weeks, Husslein sent the woman threatening text messages, which ultimately led her to seek a restraining order. Husslein subsequently contacted the woman to dissuade her from pursuing the restraining order. Based on these incidents, Husslein was charged with two counts of using a computer message to threaten injury or harm, domestic abuse, with the domestic abuse repeater enhancer.³ See WIS. STAT. §§ 947.0125(2)(a), 939.51(3)(b), 968.075(1)(a), and 968.621(1)(b) & (2). Husslein was also charged with one count of felony intimidation of a witness, domestic abuse, with the domestic abuse repeater enhancer. See WIS. STAT. §§ 940.43(5), 939.50(3)(g), 968.075(1)(a), and 939.621(1)(b) & (2).

Husslein entered a plea agreement with the State pursuant to which he agreed to plead guilty to the two computer message charges and to a reduced charge of misdemeanor intimidation of a witness, all with the domestic abuse repeater enhancer. See WIS. STAT. §§ 947.0125(2)(a), 939.51(3)(b), 968.075(1)(a), 968.621(1)(b) & (2), 940.42, and 939.51(3)(a). In exchange, the State agreed to recommend a total of three years of initial confinement and

² Attorney Paulson subsequently left the Office of the State Public Defender. Assistant State Public Defender Hannah Scheiber Jurss has been appointed to replace Paulson as Husslein's counsel.

three years of extended supervision. According to the State's offer letter, which was included in the record and referenced in the guilty plea questionnaire, the State's recommendation was contingent on Husslein not committing any new crimes.

On June 28, 2013, the trial court conducted a plea colloquy with Husslein, accepted Husslein's guilty pleas, found him guilty, and set the matter for sentencing on August 5, 2013. Before sentencing, however, Husslein contacted the victim twice by phone. He was subsequently charged with two counts of violating a domestic abuse injunction, domestic abuse, with the domestic abuse repeater enhancer. *See* WIS. STAT. §§ 813.12(4), 813.12(8)(a), 968.075(1)(a), and 939.621(1)(b) & (2).

The State notified Husslein that based on the new criminal charges, the State would be free to argue for a different sentence in the first case. It offered Husslein a new plea offer that required him to plead guilty to one of the new charges and the other new charge would be dismissed and read in. The State agreed to recommend a global sentence of four years of initial confinement and four years of extended supervision on all charges. Husslein accepted the State's plea offer and pled guilty to one of the new charges.

After accepting Husslein's guilty plea in the second case, the trial court immediately proceeded to sentencing in both cases. The trial court imposed consecutive sentences totaling four years and nine months of initial confinement and four years of extended supervision for the

³ Husslein was previously convicted of other domestic abuse crimes, making the domestic abuse repeater provisions applicable to his new crimes.

four crimes. The trial court ordered Husslein to provide a DNA sample but waived the DNA surcharge in both cases.

Postconviction/appellate counsel was appointed and he filed a no-merit report that concludes there would be no arguable merit to assert that: (1) the pleas were not knowingly, voluntarily, and intelligently entered; and (2) the trial court erroneously exercised its sentencing discretion. This court agrees with postconviction/appellate counsel's 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 pleas. There is no arguable basis to allege that Husslein's guilty pleas were 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. In both cases, he completed a plea questionnaire and waiver of rights form, which the trial court referenced during the plea hearings. *See State v. Moerderdorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Attached to each of those documents was an addendum reciting additional understandings, such as the fact that Husslein was giving up his "right to challenge the constitutionality of any police action." The printed jury instructions for the crimes were also attached. The trial court conducted two plea colloquies that addressed Husslein's understanding of the plea agreements and the charges to which he was pleading guilty, the penalties he faced, and the constitutional rights he was waiving by entering his pleas. *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 questionnaires that Husslein completed with his trial counsel, and at both plea hearings the trial court summarized the elements of the crimes for Husslein. The trial court confirmed with Husslein that he knew the trial court was free to impose the maximum sentence for each crime, and it reiterated the maximum sentences and fines that could be imposed. The State and trial counsel stipulated that the complaints provided a factual basis for the pleas, and the trial court also asked Husslein about the factual bases for the pleas. In addition, the trial court explained the effect of having the second witness intimidation charge dismissed and read in.

We also note that in the process of discussing whether Husslein was voluntarily, intelligently, and freely entering his pleas in the first case, the trial court, trial counsel, and the State addressed Husslein's competency.⁴ The trial court stated: "I don't believe there is any reason based on my conversations with Mr. Husslein to doubt his competency. My only observation of him is he tends to get upset. He's not upset today, he's very calm, but I wanted to make a record of that." Trial counsel and the State agreed with the trial court's assessment. The plea hearing colloquies do not suggest that Husslein had difficulty understanding the proceedings or that his pleas were anything but voluntarily, intelligently, and freely entered. Although Husslein did become angry at the end of the sentencing hearing because he felt the sentences were too long, the record does not suggest that there would be merit to assert that Husslein was incompetent or that his pleas were not knowingly, intelligently, and freely entered.

⁴ The criminal complaint in the first case indicated that at one point during the two-week period when Husslein was still trying to contact his girlfriend, the police department put Husslein on a WIS. STAT. ch. 51 hold, but he was released by the county mental health facility.

Based on our review of the record, we conclude that the plea questionnaires, waiver of rights forms and attached jury instructions, Husslein's conversations with his trial counsel, and the trial court's plea colloquies appropriately advised Husslein of the elements of the crimes and the potential penalties he faced, and otherwise complied with the requirements of *Bangert* and *Hampton* for ensuring that the pleas were knowing, intelligent, and voluntary. There would be no basis to challenge Husslein's guilty pleas.

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, 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 heard from the victim, who gave a detailed statement of the fear she felt and her efforts to

avoid contact with Husslein, which included changing her phone number, staying home from work, and going to her father's home. Husslein also gave a lengthy statement. The trial court referenced both of those statements when it discussed the gravity of the offenses. It said that Husslein had "no control over [his] anger" and that Husslein did not "understand the way [he] manipulated [the victim] and the power and control [he] used on her." The trial court noted that Husslein persisted in trying to contact the victim, even after he had already pled guilty in the first case and knew that his phone calls from the jail would be recorded. The trial court also referenced Husslein's "terrible" criminal record, which included other convictions for domestic abuse, and noted that Husslein had not been successful on probation or extended supervision. The trial court said that Husslein was "positively out of control" and needed "a big time out[,] out of the community, out of a place where you are a danger to [the victim] or anybody else."

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 sentences were excessive. See *Ocanas*, 70 Wis. 2d at 185. Husslein benefitted from the plea agreements that amended one charge and dismissed another charge, as his total exposure was lowered from twenty-two years to ten years. The trial court chose to impose sentences totaling eight years and nine months, including four years of extended supervision. 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 judgments are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Hannah Scheiber Jurss is relieved of further representation of Husslein in this matter. *See* WIS. STAT. RULE 809.32(3)

Diane M. Fremgen
Clerk of Court of Appeals