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June 17, 2015

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

2015AP111-CRNM State of Wisconsin v. Christopher D. Meindel (L.C. #2014CF172)

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

Christopher D. Meindel appeals from a judgment of conviction, entered upon his guilty pleas to one count of possession of methamphetamine, one count of carrying a concealed weapon, and one count of resisting or obstructing an officer. Appellate counsel, Beth A. Eisendrath, has filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2013-14).¹ Meindel was advised of his right to file a response, but

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

has not responded. Upon this court's independent review of the record, as mandated by *Anders*, and counsel's report, we conclude there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

Two Veterans' Administration police officers noticed a person moving about suspiciously in the Administration's parking lots. The person stopped at a parked motorcycle and crouched down. The officers approached the person, who said he was warming up the motorcycle for a friend. One of the officers noticed something on the person's hip; the person responded that it was a knife with a nine-inch blade, and volunteered that he was also carrying a hatchet. As it is contrary to federal law to have weapons on Veterans' Administration property, the officers took the person into custody.

While conducting a weapons search of the person, the officers saw the person drop a small pouch. The pouch contained three syringes, a small metal spoon, a roach clip, cigarette papers, and three small bags of a substance that field-tested positive for methamphetamine. The person told the Veterans' Administration officers that his name was Nicholas Martin. Several hours later, the West Milwaukee Police Department identified the person as Meindel through his fingerprints. Meindel was charged with possession of methamphetamine, carrying a concealed weapon, resisting or obstructing an officer, and possession of drug paraphernalia.

Meindel ultimately agreed to resolve his case with a plea bargain. In exchange for his pleas to the first three offenses, the State would recommend three to three and one-half years' imprisonment, broken down as twelve to eighteen months' initial confinement and twenty-four months' extended supervision. The paraphernalia charge would be dismissed and read in. The

circuit court accepted the plea and sentenced Meindel to twelve months' initial confinement and twenty-four months' extended supervision.

The sole issue counsel addresses in her no-merit report is whether the circuit court properly exercised its discretion and imposed a sentence that was not unduly harsh. However, there are two other issues we discuss first.

Meindel was charged with one count of carrying a concealed weapon for carrying both the knife and the hatchet. We therefore have examined whether there is any arguable merit to a claim that the charge was duplicitous. “Duplicity is the joining in a single count of two or more separate offenses.” *State v. Lomagro*, 113 Wis. 2d 582, 586, 335 N.W.2d 583 (1983). However, “acts which alone constitute separately chargeable offenses, ‘when committed by the same person at substantially the same time and relating to one continued transaction, may be coupled in one count as constituting but one offense’ without violating the rule against duplicity.” *Id.* at 587 (citations omitted). The State has the discretion in determining how to issue the charge, subject to the reasons for which duplicity is prohibited. *See id.* at 588.

Some of the concerns about duplicity, such as guaranteeing jury unanimity, are not present here. *See id.* at 586-87. The most applicable ones—notice to defendant, protection against double jeopardy, and ensuring appropriate sentencing—are satisfied. *See id.* And, in any event, Meindel waived any duplicity challenge with his plea. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (valid guilty plea waives all nonjurisdictional defects and defenses). Accordingly, there is no arguable merit to a duplicity challenge to the concealed-weapon charge.

The second issue we address is whether the circuit court followed the appropriate procedures in accepting Meindel's pleas. Our review of the record—including the plea questionnaire, waiver of rights form, and plea hearing transcript—confirms that the circuit court complied with its obligations for taking a guilty plea, pursuant to WIS. STAT. § 971.08, *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and subsequent cases, as collected in *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In particular, we note that, in establishing a factual basis for the pleas, the circuit court asked Meindel to recite in his own words what he had done that constituted the three crimes to which he was pleading. We are satisfied that there is no arguable merit to a claim that the circuit court failed to fulfill its obligations in accepting Meindel's pleas or that the pleas were anything other than knowing, intelligent, and voluntary.

The final issue, and the only one counsel addresses, is whether the circuit court erroneously exercised its sentencing discretion. See *State v. Gallion*, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a 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 determine which objective or objectives are of greatest importance, see *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives, the 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 may consider several subfactors. See *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 circuit court's discretion. See *Ziegler*, 289 Wis. 2d 594, ¶23.

The circuit court noted several mitigating factors, like the fact that Meindel was accepting responsibility for his actions and the fact that he recognized that methamphetamine was destroying his life. Meindel had a lengthy record going back to 1994, much of it related to drugs, with some successful discharges from probation. However, the circuit court noted that probation was still a failure because it had failed to have any deterrent effect.

The circuit court explained that Meindel was not making good choices, so it was going to sentence him to some prison time to give the public some respite from Meindel's behavior. Further, Meindel had expressed his willingness to finally accept treatment help offered to him to curtail the damage that drugs were doing to his life. The circuit court thus settled on a sentence that it thought would provide "sufficient time to address the problems" that Meindel had.

The maximum possible sentence Meindel could have received was five years' imprisonment.² The sentence totaling three years' imprisonment³ 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 so 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 discretion.

² The methamphetamine charge is a Class I felony with a maximum possible three years and six months' imprisonment. *See* WIS. STAT. §§ 961.41(3g)(g) & 939.50(3)(i). The concealed-weapons and obstruction charges are Class A misdemeanors with a possible nine months' imprisonment each. *See* WIS. STAT. §§ 941.23(2), 946.41(1) & 939.51(3)(a).

³ The circuit court imposed twelve months' initial confinement and twenty-four months' extended supervision on the methamphetamine charge, consecutive to any other sentence. For the concealed-weapons charge, the circuit court gave a nine-month sentence. For the obstruction charge, the circuit court gave a ninety-day sentence. The latter two sentences were consecutive to each other, but concurrent to the felony sentence, and were ordered to be served in the prison system.

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 Beth A. Eisendrath is relieved of further representation of Meindel in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals