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

2015AP915-CRNM State of Wisconsin v. Robert L. Camel, III (L.C. #2012CF1029)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Robert L. Camel, III, appeals from a judgment of conviction for party to the crime of burglary and an order denying his postconviction motion for resentencing. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14),[1] and ***Anders v. California***, 386 U.S. 738 (1967). Camel has filed a response to the no-merit report and counsel

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

then filed a supplemental no-merit report. RULE 809.32(1)(e), (f). Upon consideration of these submissions 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.

The home of Camel's landlady was burglarized and gold jewelry was taken. Eric Jones, one of the men that participated in the robbery, reported that Camel had picked up Jones and another man, drove them to Camel's house, and Camel then told the men to go into the landlady's home next door and get gold. After the theft, Camel drove the men to a supermarket where Camel sold the gold and then split the money with the men. Camel was also implicated in an attempted burglary by Jones thirteen days later. After the attempted burglary, the car which witnesses saw Jones escape in was traced back to Camel's residence. Jones reported that Camel drove the car that took him to the targeted home and picked him up when the burglary was interrupted.

Camel was charged with party to the crime of burglary and party to the crime of attempted burglary. He entered a guilty plea to the burglary charge and the other charge was dismissed as a read-in. As agreed upon, at sentencing the State's recommendation was that the court follow the presentence investigation report (PSI) recommendation. Camel was sentenced to four years' initial confinement and four years' extended supervision. After sentencing, a restitution hearing was conducted at which the victim testified as to the value of the stolen jewelry. The court ordered restitution of $20,053.40.

Camel filed a postconviction motion for resentencing. He argued that he had been sentenced on the basis of inaccurate information because the sentencing court had referred to the dismissed attempted burglary as a "significant theft." The court acknowledged that it misspoke when referring to the dismissed charge as involving actual theft. It determined that it did not rely on the misstatement when fashioning Camel's sentence.

The no-merit report first discusses Camel's plea and whether it was freely, voluntarily and knowingly entered. As the report observes, the circuit court relied heavily on the plea questionnaire that Camel had reviewed and signed. Although ***State v. Hoppe***, 2009 WI 41, ¶31, 317 Wis. 2d 161, 765 N.W.2d 794, explains that the circuit court may not rely entirely on a plea questionnaire as a substitute for a substantive in-court plea colloquy, the circuit court did not run afoul of ***Hoppe***'s admonition. The circuit court made specific inquiry about each portion of the plea questionnaire that relates to the judge's duties during the plea colloquy. For example, the elements of the offense, including party-to-the-crime liability, were attached to the plea questionnaire and the circuit court referred to the attachment and obtained Camel's acknowledgement that he read and understood those elements. A sufficient balance was made between the colloquy and reference to the plea questionnaire to establish that Camel's plea was knowing, intelligent, and voluntary.

Although the deportation warning required by WIS. STAT. § 971.08(1)(c), was not given, the presentence investigation report lists Camel's birthplace as Illinois. The failure to give the warning is not grounds for relief because there is no suggestion that Camel could show that his plea is likely to result in deportation. *See* ***State v. Douangmala***, 2002 WI 62, ¶4, 253 Wis. 2d 173, 646 N.W.2d 1. The circuit court also failed to address Camel personally about the nature of the read-in charge. *See* ***State v. Straszkowski***, 2008 WI 65, ¶¶5, 97, 310 Wis. 2d 259, 750

N.W.2d 835 (suggesting that at the plea hearing the trial court "should advise a defendant that it may consider read-in charges when imposing sentence but that the maximum penalty of the charged offense will not be increased; that a circuit court may require a defendant to pay restitution on any read-in charges; and that the State is prohibited from future prosecution of the read-in charge."). However, the plea questionnaire included the advisement that the judge could consider read-in charges at sentencing but the maximum penalty would not increase, that restitution could be ordered on any read-in charges, and that read-in charges could not later be prosecuted. The circuit court ascertained Camel's execution, reading of, and understanding of the plea questionnaire. Thus, if the circuit court was required to make advisements about the read-in charges,[2] the failure to personally address Camel about the effects of the read-in charge does not render his plea unintelligent. *See* ***State v. Reed***, No. 2009AP3149-CR, unpublished slip op. ¶¶17-18 (WI App Jan. 11, 2011).[3] *See also* ***State v. Johnson***, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 441 (plea withdrawal is not justified unless the fundamental integrity of the plea is seriously flawed).

In his response to the no-merit report, Camel complains that he was not told at the plea hearing that he might be required to pay restitution and how much it would be. The circuit court

[2] It appears unsettled whether the advisements outlined in ***State v. Straszkowski***, 2008 WI 65, ¶¶5, 97, 310 Wis. 2d 259, 750 N.W.2d 835, are part of the circuit court's duties during a plea colloquy. *See* ***State v. Hoppe***, 2009 WI 41, ¶¶19, 23, 317 Wis. 2d 161, 765 N.W.2d 794 (claim that the circuit court failed to notify the defendant that the read-in offenses could be considered at sentencing targeted the court's mandatory plea colloquy duties); ***State v. Lackershire***, 2007 WI 74, ¶28 n.8, 301 Wis. 2d 418, 734 N.W.2d 23 (the supreme court declined to adopt the court of appeals' characterization of read-ins as "collateral consequences" and expressly declined to address a circuit court's obligation to explain the nature of read-in offenses).

[3] WISCONSIN STAT. RULE 809.23(3)(b) allows the citation of an unpublished authored opinion issued after July 1, 2009 for its persuasive value.

was not required to advise Camel during the plea colloquy that it could order restitution. ***State v. Dugan***, 193 Wis. 2d 610, 624, 534 N.W.2d 897 (Ct. App. 1995). Also, there is no requirement that the amount of restitution be determined before a defendant enters a guilty or no-contest plea. In summary, there is no arguable merit to a challenge to Camel's plea.

Next we consider whether there is arguable merit to a claim that the sentence was the result of an erroneous exercise of discretion. The basic objectives of the sentence include the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others. ***State v. Gallion***, 2004 WI 42, ¶40, 270 Wis. 2d 535, 678 N.W.2d 197. The court is to identify the general objective of most import. ***Id.***, ¶41. Looking at the fact that Camel committed the charged crimes when he was on extended supervision,[4] the sentencing court fashioned the sentence to protect the community. The sentence was a demonstrably proper exercise of discretion.

A defendant has a due process right to be sentenced based upon accurate and valid information. ***State v. Tiepelman***, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. To establish a due process violation, the defendant must show both that the information was inaccurate and that the court actually relied on the inaccurate information in the sentencing. ***Id.***, ¶26.

Here the sentencing court acknowledged during the postconviction hearing that it misspoke when it referred to the read-in offense as involving a significant theft when in fact it

[4] The sentencing court referred to Camel as being on probation when he committed the charged crimes. Camel believes that the sentence was based on incorrect information because in fact he was on extended supervision, not probation. The important fact was that Camel was subject to supervision when he committed more crimes. It is not significant that the sentencing court misspoke in referring to probation rather than extended supervision.

was only an attempted burglary. The court concluded that it did not in fact rely on the characterization of the crime when imposing Camel's sentence. "A postconviction court's assertion of non-reliance on allegedly inaccurate sentencing information is not dispositive. We may independently review the record to determine the existence of any such reliance." ***State v. Groth***, 2002 WI App 299, ¶28, 258 Wis. 2d 889, 655 N.W.2d 163 (citation omitted), *other language withdrawn by* ***Tiepelman***, 291 Wis. 2d 179, ¶31. The record confirms that the sentencing court did not rely on the misstatement about the read-in offense in determining the length of Camel's sentence. As noted above, the sentence was driven by the need to protect the public and was based on Camel's the commission of other crimes while on supervision.

Camel complains that the PSI was tainted and that he had been having issues with the PSI author since that person became his probation officer. Even if the PSI included some bias against Camel, it was only a recommendation and the sentencing court was not bound to follow it. ***State v. Bizzle***, 222 Wis. 2d 100, 105 n.2, 585 N.W.2d 899 (Ct. App. 1998). Indeed there is nothing in the record suggesting that the court wholly adopted the PSI recommendation. It made its own independent determination of an appropriate sentence. In summary, there is no issue of arguable merit that could arise from either the sentence or the denial of Camel's postconviction motion.[5]

The remaining issue addressed by the no-merit report is the determination of restitution. We agree with the no-merit report's conclusion that the evidence was sufficient to support the

[5] Camel claims in his response that the victim gave false information at sentencing when she stated that the stress of the situation caused a hole in her lungs. The sentencing court did not mention the victim's claim and it cannot be said that the court relied on that as an improper factor or inaccurate information.

amount of restitution. The victim produced receipts for some of the stolen items. The sentencing court also found her to be credible in her valuation of stolen items for which she could not produce receipts. "Wisconsin case law is clear that an owner of property may testify as to its value and that such testimony may properly support a jury verdict for damages, even though the opinion is not corroborated or based on independent factual data." ***Mayberry v. Volkswagen of Am., Inc.***, 2005 WI 13, ¶42, 278 Wis. 2d 39, 692 N.W.2d 226.

Camel has many complaints regarding the amount of restitution. First, he believes it was improper for the victim to go into his home and obtain his ex-wife's bank and 401(k) statements to prove that he had assets to pay restitution. Although the restitution hearing was adjourned so Camel's attorney could research the victim's suggestion that a 401(k) account existed from which restitution could be paid, no evidence of the account was presented at the restitution hearing. No arguable issue can be fashioned from Camel's complaint that the victim may have improperly obtained the account statement.

Camel also suggests that the amount of restitution is improper because the victim's insurance company reimbursed her for some of the stolen items and now the insurance company is trying to recover the money from him. "A restitution order does not limit or impair the right of a victim to sue for civil damages; however, the amount of restitution paid to a victim in a criminal proceeding may be a setoff against a like amount in the judgment in a companion civil case." ***State v. Walters***, 224 Wis. 2d 897, 906, 591 N.W.2d 874 (Ct. App. 1999). *See also* WIS. STAT. § 973.20(8). That the insurance company may be pursuing a claim against Camel does not require any adjustment of the restitution order. Any civil liability Camel may face is outside the scope of this appeal.

Camel points out that he is left without any funds while incarcerated because of the restitution order and the percentage of the deposits in his prison account that the Department of Corrections deducts to pay restitution. It was within the sentencing court's discretion to order that restitution be paid from Camel's prison account. *See* WIS. STAT. § 973.20(10).

Camel's final claim in his response to the no-merit report is that his wife's car was improperly seized and impounded without a search warrant. It may be that the car was seized and impounded because it was used in the commission of a crime. *See* WIS. STAT. § 973.075. However, the seizure of the car is a civil forfeiture and not a matter to be addressed in this appeal. It is not an issue on which appointed counsel owes a duty of representation.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction and discharges appellate counsel of the obligation to represent Camel 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 Dianne M. Erickson is relieved from further representing Robert L. Camel, III, in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals