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

2015AP1075-CRNM State of Wisconsin v. Thomas William Felder
(L.C. # 2014CF001649)

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

Thomas William Felder appeals from a judgment of conviction for four counts of armed robbery, contrary to WIS. STAT. § 943.32(2) (2013-14).[1] Felder's postconviction/appellate counsel, Michael J. Backes, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Felder received a copy of the report, was advised of his right to file a response, and has elected not to do so. We have independently reviewed the

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

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 criminal complaint charged Felder with four counts of armed robbery, all of which were committed in April 2014. In each case, Felder went to a store, started to purchase an item, then displayed a gun and demanded money from the clerk. Felder then fled with cash from each store. When he was apprehended, he admitted all four crimes to the police.

Felder entered a plea agreement with the State pursuant to which he pled guilty to all four charges. In exchange, the State agreed to recommend a total of eight to ten years of initial confinement and leave the length of extended supervision to the trial court. The State also agreed not to charge an additional misdemeanor of receiving stolen property based on the parties' agreement that it would be read in for sentencing purposes.[2] The defense was free to argue for a different sentence.

The trial court conducted a plea colloquy with Felder, accepted Felder's guilty pleas, and found him guilty. No presentence investigation report was ordered, but the defense submitted a sentencing memorandum on Felder's behalf that discussed Felder's crimes, his family life, and his "minimal criminal prior record." That memorandum explained that one reason Felder committed the robberies was because of an addiction to Percocet and Oxycodone. The memorandum recommended that Felder be sentenced to a total of six years of initial confinement

[2] At the plea hearing, the parties initially told the trial court that another uncharged armed robbery would be read in for sentencing purposes, but they ultimately decided not to include that crime because Felder denied it. The parties agreed that the State would have the right to charge that crime separately in the future if it wanted to. At the plea hearing and at sentencing, the trial court stated that it would not consider that alleged armed robbery for sentencing purposes.

and eight to ten years of extended supervision. It also recommended that the trial court declare Felder eligible for the Challenge Incarceration Program (CIP) and the Substance Abuse Program (SAP).

At sentencing, trial counsel recommended a sentence consistent with the sentencing memorandum, and the State made the recommendation it promised at the plea hearing. The trial court imposed four concurrent sentences of eight years of initial confinement and ten years of extended supervision. It also found Felder eligible for both CIP and SAP. The trial court ordered Felder to pay four mandatory $250 DNA surcharges (one for each felony), consistent with WIS. STAT. § 973.046(1r), which was made applicable by 2013 WI Act 20, §§ 2355 and 9426, to sentences imposed after January 1, 2014.[3]

The no-merit report analyzes three issues: (1) whether Felder's guilty pleas were knowingly, intelligently, and voluntarily entered; (2) whether the trial court erroneously exercised its sentencing discretion; and (3) whether there is any basis to seek sentence modification. This court agrees with postconviction/appellate counsel's description and analysis of the potential issues identified in the no-merit report. We independently conclude that pursuing those issues would lack arguable merit and will briefly discuss them below.

There is no arguable basis to allege that Felder's guilty pleas were not knowingly, intelligently, and voluntarily entered. *See* WIS. STAT. § 971.08; ***State v. Bangert***, 131 Wis. 2d

[3] There has been litigation in the court of appeals about the mandatory DNA surcharges being applied to felony and misdemeanor convictions where the defendant is sentenced after January 1, 2014, but committed the crimes prior to that date. *See, e.g.*, ***State v. Elward***, 2015 WI App 51, 363 Wis. 2d 628, 866 N.W.2d 756 (misdemeanors); ***State v. Radaj***, 2015 WI App 50, 363 Wis. 2d 633, 866 N.W.2d 758 (felonies). Because Felder's crimes were committed after January 1, 2014, the *ex post facto* issue identified in ***Elward*** and ***Radaj*** is not at issue here.

246, 260, 389 N.W.2d 12 (1986). 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 were the printed jury instructions. The trial court conducted a plea colloquy that addressed Felder's understanding of the plea agreement and the charges to which he was pleading guilty, the penalties he faced, and the constitutional rights he was waiving by entering his pleas. The trial court confirmed with Felder that he knew the trial court was not bound by the plea agreement, and it reiterated the maximum sentences and fines that could be imposed. *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 also discussed the effect of having one uncharged crime read in for sentencing purposes.

Based on our review of the record, we conclude that the plea questionnaire, waiver of rights form, attached jury instructions, Felder's conversations with his trial counsel, and the trial court's colloquy appropriately advised Felder 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.

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 talked about the heinousness of the crimes and noted that people "have a hard time" coping after being the victim of an armed robbery. The trial court also discussed Felder's character, including his drug use. The trial court said it needed "to protect society from this type of behavior."

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. The trial court could have imposed a total of one hundred years of initial confinement. Its imposition of four concurrent eight-year terms of initial confinement was well within the maximum sentence and 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.").

The final issue is whether there would be any basis to seek sentence modification. We agree with the no-merit report's analysis, which indicates that neither the record nor counsel's own investigation revealed any basis for sentence modification. We also note that the trial court sentenced Felder to only two more years of initial confinement than he had recommended, and it granted his request to be declared eligible for both CIP and SAP. We discern no basis to seek sentence modification.

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 Michael J. Backes is relieved of further representation of Felder in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals