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February 7, 2017

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

2016AP1625-CRNM State of Wisconsin v. Dionte Williams (L.C. # 2014CF4868)

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

Dionte Williams appeals from a judgment of conviction, entered upon his guilty plea, on one count of second-degree reckless homicide as party to a crime. Appellate counsel, Thomas J. Erickson, has filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2015-16).¹ Williams was advised of his right to file a response, but he has not responded. Upon this court's independent review of the record, as mandated by *Anders*,

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

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.

Background

On November 1, 2014, police responded to a fight complaint. According to two witnesses who were awakened by arguing or screams outside their homes, there was a group of people kicking an individual on the ground. When police arrived, they found Alfonso Estrada-Cortes laying face up. Resuscitation efforts failed; the medical examiner determined the cause of death was blunt force trauma to the head. The police investigation ascertained that shortly after bar closing time, Estrada-Cortes's vehicle struck Leonardo Cortes's car, but Estrada-Cortes failed to stop after the accident.² Cortes and others, including Williams, followed Estrada-Cortes in their vehicles and began to assault him once he finally did stop and exit his vehicle.

Both witnesses stated there was an SUV-type vehicle at the scene, possibly a Chevrolet Suburban. One of the witnesses reported the vehicle was white. One of the 911 calls reporting the fight was placed at 2:34 a.m.; at 2:40 a.m., police observed a white Suburban nearby, with multiple individuals inside. The driver was Christina Suarez; the front passenger gave his name as Kareem Anderson, but he was later identified as Williams through his fingerprints.

Williams; Joe Estrada, III; and Stephano Torres were charged as co-defendants, each with one count of first-degree reckless homicide as party to a crime. Pursuant to a plea agreement, Williams' charge was reduced to second-degree reckless homicide as party to a crime. In

² Despite the similarity in some names, it does not appear that any of the individuals named in this case are related to the victim.

exchange for his guilty plea to the reduced charge, the State would stand silent as to the length of any sentence, and Williams agreed to testify against his co-defendants if necessary. The circuit court accepted the charge amendment and Williams' guilty plea. The circuit court subsequently sentenced Williams to the maximum penalty of twenty-five years' imprisonment, consisting of fifteen years' initial confinement and ten years' extended supervision.

Williams filed a motion for postconviction relief, arguing his sentence was unconstitutionally disparate compared to Estrada's twenty-two years' imprisonment, and Torres's eighteen years' imprisonment. The circuit court, which had sentenced all three defendants, denied the motion with a written order, explaining the differing sentences.

Discussion

Counsel discusses three potential issues. The first of these is whether there is any basis for challenging Williams' guilty plea as not knowing, intelligent, or voluntary. See *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Williams completed a plea questionnaire and waiver of rights form, see *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987), in which he acknowledged that his attorney had explained the elements of the offense. Jury instructions for second-degree reckless homicide and party-to-a-crime liability were attached and signed by Williams. The plea questionnaire form correctly acknowledged the maximum penalties Williams faced, and the form, along with an addendum, also specified the constitutional rights he was waiving with his plea. See *Bangert*, 131 Wis. 2d at 262, 271. The circuit court further conducted a plea colloquy, as required by WIS. STAT. § 971.08, *Bangert*, and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14,

to ensure that Williams' plea was valid. Our review of the record satisfies us that the colloquy was appropriately conducted.

Thus, the plea questionnaire and waiver of rights form and addendum, the jury instructions, and the circuit court's plea colloquy appropriately advised Williams of the elements of his offenses and the potential penalties he faced, and otherwise complied with the requirements of *Bangert* and *Hampton* for ensuring that Williams' plea was knowing, intelligent, and voluntary. There is no arguable merit to a challenge to the plea's validity.

The next issue counsel raises 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 that the assault on Estrada-Cortes was extremely serious and commented that the community expects punishment of a savage, brutal attack conducted "for nothing that was of import." It determined that this offense, plus Williams' record, which included at least two open cases with warrants for failure to appear, demonstrated that he was a

“serious threat” to public safety until he addressed rehabilitative needs related to alcohol abuse and criminogenic thinking. The circuit court further determined that those rehabilitative needs would have to be addressed in a secure setting. The circuit court found it aggravating that Williams first obstructed police by lying about his identity and believed that he acknowledged his responsibility only after the State offered the “significant benefit” of the plea agreement.

These factors led the circuit court to impose the maximum possible twenty-five-year sentence. This sentence is within the range authorized by law. See *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. Our review of the record satisfies us that the circuit court considered only appropriate factors in setting this sentence.³ There would be no arguable merit to a challenge to the sentencing court’s discretion.

Related to the circuit court’s exercise of discretion, counsel also addresses a third issue: whether there is any arguable merit to challenging the circuit court’s denial of the postconviction motion regarding disparate sentencing. Williams moved for an order modifying or vacating his sentence, arguing his maximum sentence was “unduly harsh” and, compared to the sentences of his co-defendants, “so unduly disparate as to deny him equal protection under the law.”

All three defendants pled to an amended charge of second-degree reckless homicide as party to a crime. Williams and Estrada pled guilty while Torres pled no contest. All three were sentenced by the same judge. Williams was sentenced first and was given the maximum twenty-five-year sentence. Estrada received twenty-two years’ imprisonment. Torres, sentenced last,

³ The circuit court also ordered joint and several restitution, to which Williams stipulated.

was given eighteen years' imprisonment.⁴ In complaining about the disparity, Williams argued that Estrada and Torres had similar or worse criminal records than he did, and noted that Estrada had searched Estrada-Cortes's vehicle, intending to steal his wallet, before leaving the scene.

Wisconsin recognizes the importance of "individualized sentencing." See *Gallion*, 270 Wis. 2d 535, ¶48. Defendants do not receive the same punishment simply because they are convicted of the same offense. Rather, they are to be "sentenced according to the needs of the particular case as determined by the criminals' degree of culpability and upon the mode of rehabilitation that appears to be of greatest efficacy." *McCleary v. State*, 49 Wis. 2d 263, 275, 182 N.W.2d 512 (1971). Disparity alone does not amount to an equal protection violation. See *Ocanas v. State*, 70 Wis. 2d 179, 189, 233 N.W.2d 457 (1975). So long as the disparity is not arbitrary or based on irrelevant considerations, there is no actionable equal protection violation. See *id.* at 186-87. In order to establish that a sentencing disparity is improper, a defendant must show that the circuit court "based its determination upon factors not proper in or irrelevant to sentencing, or was influenced by motives inconsistent with impartiality." *Jung v. State*, 32 Wis. 2d 541, 548, 145 N.W.2d 684 (1966).

In denying the motion, the circuit court explained that Williams initially obstructed police by providing a false identity and had to be identified by his fingerprints. He had two open warrants at the time of the offense. His criminal history included two gun offenses and operating while intoxicated causing injury. Estrada, while admitting he kicked Estrada-Cortes three times, claimed he arrived after the others had started assaulting Estrada-Cortes. Although this did not

⁴ The disparity in sentences is in the initial confinement terms; all three defendants received ten years of extended supervision.

necessarily match witness statements, Estrada did not have Estrada-Cortes's DNA on him anywhere, though Williams and Torres did. Estrada had also been the first to take responsibility for his involvement in the assault and he had been credited accordingly. Torres claimed to have arrived while Estrada-Cortes was already on the ground. Williams was admittedly the first to kick Estrada-Cortes. Most damaging for Williams, though, was that Estrada-Cortes died from blunt force trauma to the head, and Williams admitted kicking him in the face. The circuit court thus explained that the "utterly savage act of kicking someone in the head as he lay beaten on the ground showed such a total disregard for human life that the court imposed a longer sentence" on Williams than his co-defendants.

Given the circuit court's explanation, there is no arguable merit to a claim the circuit court based Williams' sentence on improper or irrelevant sentencing factors or that its sentence was "influenced by motives inconsistent with impartiality." *See id.* Thus, there is no arguable merit to challenging the circuit court's denial of the postconviction motion.

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 Thomas J. Erickson is relieved of further representation of Williams in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals