OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

February 16, 2017

To:

Hon. William S. Pocan
Milwaukee County Courthouse
901 N. 9th Street
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State Street
Milwaukee, WI 53233

John Barrett, Clerk
Milwaukee County Courthouse
821 W. State Street
Milwaukee, WI 53233

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Kaitlin A. Lamb
Assistant State Public Defender
735 N. Water Street, Suite 912
Milwaukee, WI 53202

Carl C. Panfil #632317
Racine Corr. Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2016AP814-CRNM State v. Carl C. Panfil
(L.C. # 2015CF000970)

Before Kessler, Brash and Dugan, JJ.

Carl C. Panfil appeals from a judgment of conviction for one count of robbery from a financial institution, contrary to WIS. STAT. § 943.87 (2015-16).[1] Panfil's postconviction/appellate counsel, Kaitlin A. Lamb, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Panfil has filed a response. We have independently reviewed the record, the no-merit report, and the response, as mandated

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

by ***Anders***, and we conclude that there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm.

The complaint alleged that on March 2, 2015, Panfil robbed a bank. According to the complaint:

> [A] man entered the bank, went to [the] teller window, handed [the teller] a gray plastic bag, and said, "Put all the money in the bag; nobody gets hurt." [The teller] took cash out [of] the drawer and put it into the man's bag. The money included three bills whose serial numbers had been recorded in advance. The man took the bag and left. The incident was captured on video.
>
> Police were called and given a description of the man. Within minutes of the robbery [an officer] saw and stopped [Panfil] walking a few blocks from the bank. [Panfil] was wearing the identical hat, glasses, and clothing that the robber wore, and carrying a gray plastic bag filled with cash…. [A]ll three pre-recorded bills were found among the money on the defendant.

The complaint further alleged that Panfil told the officers that he made the decision to rob the bank about an hour before doing so.

Panfil was charged with one count of robbery of a financial institution. Panfil entered into a plea agreement with the State pursuant to which he agreed to plead guilty and the State agreed to recommend incarceration, with the length and location left to the trial court's discretion.

The trial court conducted a plea colloquy with Panfil, accepted Panfil's guilty plea, and found him guilty. At sentencing, the State recommended incarceration, stating that it could not "recommend any period of probation" in this case, because although Panfil was sixty-three years old and had no prior criminal record, some punishment was necessary. Trial counsel urged the trial court to sentence Panfil to one year in jail.

The trial court also heard from a bank employee who was present during the robbery. She told the trial court that memories of the robbery have disturbed her sleep and that she and her co-workers who were present for the robbery are fearful when people enter the bank. Finally, the trial court heard directly from Panfil, who said that he had "really no idea" why he committed the crime and that if he had been "sober at the time," he would not have committed it.

The trial court sentenced Panfil to five years of initial confinement and five years of extended supervision and also ordered Panfil, a first-time felon, to provide a DNA sample and pay the mandatory DNA surcharge. The trial court made Panfil eligible for participation in the Wisconsin substance abuse program, *see* WIS. STAT. § 302.05, but only after he serves four years of initial confinement.

After sentencing, postconviction/appellate counsel filed a motion for one additional day of sentence credit, which was granted. This appeal follows.

The no-merit report analyzes two issues: (1) whether Panfil's guilty plea was knowingly, voluntarily, and intelligently entered; and (2) whether the trial court erroneously exercised its sentencing discretion. This court agrees with postconviction/appellate counsel's thorough description and analysis of the potential issues identified in the no-merit report, and we independently conclude that pursuing those issues would lack arguable merit. We will briefly discuss those issues.

We begin with Panfil's plea. There is no arguable basis to allege that Panfil's guilty plea was not knowingly, intelligently, and voluntarily entered. *See* WIS. STAT. § 971.08; ***State v. Bangert***, 131 Wis. 2d 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 a printed list of the elements of the crime and an addendum signed by Panfil and his attorney that outlined additional understandings, such as the fact that Panfil was giving up certain defenses. The trial court asked Panfil about his understanding of the proceedings and also confirmed that Panfil had reviewed the criminal complaint with trial counsel. Panfil indicated that the facts alleged in the complaint were true.

The trial court conducted a thorough plea colloquy that addressed Panfil's understanding of the plea agreement and the charge to which he was pleading guilty, the penalties he faced, and the constitutional rights he was waiving by entering his plea. *See* WIS. STAT. § 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. We conclude that the plea questionnaire, waiver of rights form, Panfil's conversations with his trial counsel, and the trial court's colloquy appropriately advised Panfil of the elements of the crime and otherwise complied with the requirements of ***Bangert*** and ***Hampton*** to ensure that his plea was knowing, intelligent, and voluntary. The record does not suggest there would be an arguable basis to challenge Panfil's guilty plea.

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 sentence was 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 said that given Panfil's age and his lack of a prior criminal history, a maximum sentence was not called for, but it also expressed concern that Panfil did not fully recognize how serious the crime was and had told the trial court that he has "no idea" why he committed the robbery. The trial court stated: "I worry about what you're capable of doing down the road." The trial court also commented on the effect of the crime on the victims, including the woman who came to court to share her experience. The trial court concluded that it was necessary to impose a prison sentence "given the seriousness of this crime and the effect that it had on [the] immediate victims, and the effect it has on the overall community." 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 arguable merit to assert that the sentence was excessive. *See* ***Ocanas***, 70 Wis. 2d at 185. The trial court could have imposed twenty-five years of initial confinement and fifteen years of extended supervision, but it imposed only five years of initial confinement and five years of extended supervision, which was well within the maximum sentence. 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.").

In his response to the no-merit report, Panfil raises two issues related to his sentence. First, he asserts that he "know[s] for a fact that if [he] was sober [he] would not have committed [a] crime." He indicates he would like to go to Alcoholics Anonymous meetings, but states that pursuant to the trial court's orders, he has "to wait until my sentence is almost over." Panfil has not raised an issue of arguable merit. It was within the trial court's discretion to make Panfil eligible for the Wisconsin substance abuse program and to require that Panfil first serve four years of initial confinement. The trial court did not otherwise preclude Panfil from seeking treatment or attending Alcoholics Anonymous meetings in prison. Whether Panfil has access to programs such as Alcoholics Anonymous in prison is a question best directed to the prison authorities.

Panfil's second complaint is that he believes the bank employee who testified at his sentencing lied and that her statement caused the trial court to give Panfil a "harsh and excessive" sentence. In support of his assertions, Panfil has attached a police report indicating that the woman told the police that after she saw Panfil enter the bank and approach the teller's desk, she "turned back towards the drive-thru window to help a customer who had just arrived" and "did not hear or see what [Panfil] was telling [the teller] at his teller's desk." Panfil has also attached the woman's written crime victim impact statement in which she wrote: "Although after the robbery was done we found out he had no weapons, that does not change the fact that he threatened, 'make it quick and no one will get hurt' during the robbery.'"

We have reviewed the materials Panfil has provided to determine whether they present an issue of arguable merit, and we will assume the accuracy of those documents for purposes of resolving this appeal. We have also reviewed the sentencing transcript that includes the woman's statement to the trial court. We are not convinced that Panfil has raised an issue of arguable merit. Although the woman in her written and oral statements talked about what happened, she never actually said that she personally heard Panfil demand money from the teller. Even the police report states that "[t]he first time [she] knew about the robbery was after the male had left and [the teller] explained what had happened." The fact that the woman was unaware for several minutes that the robbery had occurred does not negate that she felt frightened about what occurred in the presence of her and her coworkers and that she continues to experience fear in her workplace. Those are the feelings she shared with the trial court. It was appropriate for her to share details about what happened—including the fact that the teller "was threatened that if we weren't fast enough someone was going to get hurt"—and to explain how the robbery continues to affect her and her coworkers.

Moreover, the issue at sentencing was not what Panfil said to the teller or who heard Panfil threaten violence. When Panfil pled guilty, he stipulated to the accuracy of the criminal complaint. It was those facts, as well as the impact of the crime on the woman and her coworkers, that the trial court properly considered at sentencing. For these reasons, we conclude there would be no arguable merit to file a postconviction motion or an appeal based on the reports and information that Panfil provided in his response.

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 Kaitlin A. Lamb is relieved of further representation of Panfil in this matter. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals