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**DISTRICT I**

February 21, 2017

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

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2016AP1816-CRNM      State of Wisconsin v. Dontae Reale Slater-Harris  
(L.C. # 2014CF5484)

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

Dontae Reale Slater-Harris appeals from a judgment convicting him of attempted robbery, as a party to a crime. He also appeals an order denying his postconviction motion to modify his sentence. Appointed appellate counsel, Hannah Schieber Jurss, filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738, 744 (1967), and WIS. STAT. RULE 809.32 (2015-16).<sup>1</sup> Slater-Harris was advised of his right to file a response, but he has not done so.

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

After reviewing the no-merit report and conducting an independent review of the record, we conclude there are no issues of arguable merit that could be pursued on appeal. Therefore, we affirm.

Counsel first addresses whether there would be arguable merit to a claim that Slater-Harris's plea was not knowingly, intelligently, and voluntarily entered. *See* WIS. STAT. § 971.08 and *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). The circuit court conducted a plea colloquy in which it ascertained that Slater-Harris was aware of the maximum penalty he faced by entering a plea, the constitutional rights he was waiving, and the nature of the crime—that is—the elements of the crime that the State would have to prove to convict him. Slater-Harris 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), which explained the elements of the offense, the maximum penalties and the constitutional rights he was waiving. The jury instructions, which listed the elements, were attached to the questionnaire. The jury instructions did not explain party-to-a-crime liability, but Slater-Harris's lawyer informed the court that he explained party-to-a-crime liability to Slater-Harris.

The plea agreement was explained on the record, and Slater-Harris told the circuit court that he understood. *See State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. The circuit court informed Slater-Harris that it was not bound by the terms of the agreement. The circuit court explained to Slater-Harris that two charges were dismissed and read in, which meant that it could consider the charges at sentencing as bearing on his character, but no sentence would be imposed on him for those crimes.

The circuit court complied with its additional duties to ensure that no threats had been made to induce the pleas and to satisfy itself that a factual basis for the pleas existed. Importantly, the circuit court also asked Slater-Harris if he had enough time to discuss his case with counsel and if counsel had satisfactorily answered all of Slater-Harris's questions. Slater-Harris answered affirmatively. The circuit court asked Slater-Harris if the complaint could be used as a factual basis for the crime. He said that it could. The circuit court asked Slater-Harris if he was "pleading guilty to attempted robbery party to a crime because he committed that crime," and Slater-Harris answered "yes." The circuit court also informed Slater-Harris that if he was not a citizen of the United States of America, he could be deported if he pled guilty to the crime. See *State v. Douangmala*, 2002 WI 62, ¶46, 253 Wis. 2d 173, 646 N.W.2d 1.

The plea questionnaire and waiver of rights form, attached jury instructions, as supplemented by counsel, and the circuit court's colloquy appropriately advised Slater-Harris of the elements of the offense and the potential penalties he faced, and otherwise complied with the requirements of *Bangert* and *Hampton* for ensuring that his plea was knowing, intelligent, and voluntary. There would be no arguable merit to a challenge to the plea's validity.

Counsel next addresses in the no-merit report whether there would be arguable merit to a claim that the circuit court erroneously exercised its sentencing discretion when it imposed seven years of imprisonment comprised of four years and six months of initial confinement and two years and six months of extended supervision. "The principal objectives of a sentence include but are not limited to[] the protection of the community, the punishment of the defendant, 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. "A sentencing court should indicate the general objectives of the greatest importance and explain how, under the facts of the particular case, the sentence

selected advances those objectives.” *Id.* In addition, “the sentencing court must also identify the factors that the court considered in arriving at the sentence, and must indicate how those factors fit the objectives and influenced the sentencing decision.” *Id.* The court must consider the following primary sentencing factors: “(1) the gravity of the offense, (2) the character of the defendant; and (3) the need to protect the public.”<sup>2</sup>

The circuit court considered the gravity of the offense, noting that the crime was aggravated because Slater-Harris had a gun. The circuit court also considered Slater-Harris’s character, pointing out that he had a juvenile record and had spent time at Lincoln Hills but had not learned from his experiences because he was still committing crimes. The circuit court also considered the need to protect the public, concluding that Slater-Harris was a danger to the community. The circuit court explained that Slater-Harris needed to spend time in prison to deter others in the community from committing armed robberies. The circuit court noted proper sentencing objectives and considered no improper factors. Therefore, there would be no arguable merit to a claim that the circuit court misused its sentencing discretion. *See State v. Gallion*, 2004 WI 42, ¶43, 270 Wis. 2d 535, 678 N.W.2d 197 (“Courts must ... identify the factors that were considered in arriving at the sentence and indicate how those factors fit the [sentencing] objectives and influence the [sentencing] decision.”).

Counsel next addresses whether there would be arguable merit to a claim that the circuit court erred in denying Slater-Harris’s postconviction motion for sentence modification. Slater-

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<sup>2</sup> Other factors may also be considered. *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. *Ziegler* includes a list of some additional factors that the sentencing court may consider. *Id.*

Harris argued that recently-published data reflecting severe economic inequality in the City of Milwaukee between black and white people was a “new factor” that warranted resentencing. Slater-Harris argued that this information was highly relevant to the sentence the circuit court imposed because the court questioned him during the sentencing hearing about why he did not find employment rather than robbing people.

A “new factor” is “a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because ... it was unknowingly overlooked by all of the parties.” *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted). “Whether a fact or set of facts presented by the defendant constitutes a ‘new factor’ is a question of law.” *Id.*, ¶33. Whether a new factor justifies sentence modification is committed to the circuit court’s discretion. *Id.*

The circuit court explained that the information provided by Slater-Harris was not new; the same study had been released in 2015, before Slater-Harris’s sentencing on January 5, 2016. The circuit court also concluded that the information was not highly relevant to the sentence it imposed, explaining as follows:

The defendant pointed a gun at three individuals in order to take their money and/or property. He represented to the court that he did this because he needed the money and could not find [a] job. The court did not sentence the defendant to prison because it found this claim unbelievable or [because] it wanted to punish a low income black man for his inability to secure a job. The court’s sentence was based on the fact that the defendant already received a substantial benefit from the plea agreement and that he had a prior adjudication for armed robbery.

The circuit court properly rejected Slater-Harris’s argument because the information was not new and, even if it had been introduced at sentencing, the court would not have imposed a lesser

sentence. There would be no merit to an appellate argument that the circuit court erred in denying Slater-Harris's postconviction motion.

Our independent review of the record reveals no other potential issues of arguable merit.

Therefore,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed.

*See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Hannah Schieber Jurss is relieved from further representation of Slater-Harris in this matter. *See* WIS. STAT. RULE 809.32(3).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*