



mandated by *Anders*, 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**

As set forth in the criminal complaint, which provided a factual basis for Groce's plea, on August 21, 2012, police officers were dispatched based on "a subject with gun complaint." Upon arriving at the scene, the officers observed Groce awkwardly walking westward in an alley: Groce's left hand was jammed into his left front pant's pocket; the left side of Groce's pants were notably lower than the right side of his pants; and Groce's left arm was tightly pressed against his body in a manner that appeared to be unnatural and uncomfortable. According to the complaint, the officers immediately believed Groce was concealing a firearm down the left leg of his pants.

The officers approached Groce and asked if he had a gun. The complaint alleged that Groce's eyes "became very open" and he began to breathe heavily while standing completely still. The officers proceeded to frisk Groce and ultimately removed a twelve-gauge pump action shotgun from his left pant leg. The shotgun magazine contained four unfired twelve-gauge shotgun shells, but the chamber was empty. It was subsequently determined that the shotgun barrel measured 15.5 inches from closed breech to muzzle.

During an interview with an officer following his arrest, Groce admitted to concealing the shotgun. He said he went to the area, which was where his sister lived, with the gun after he was told that a gang member "was shooting up the block."

Groce moved to suppress all evidence obtained as a result of the stop and frisk. After a hearing, the circuit court denied the motion. Groce subsequently entered a guilty plea. The circuit court sentenced him to seven months in the House of Correction with release privileges.

In his no-merit report, counsel identifies three issues: (1) the circuit court's denial of Groce's suppression motion; (2) the validity of Groce's guilty plea; and (3) the circuit court's exercise of its sentencing discretion. We address each of these issues in turn.

## DISCUSSION

### *A. Motion to Suppress*

Counsel discusses whether there is any arguable merit to a challenge to the circuit court's denial of the suppression motion. A circuit court's decision on a motion to suppress evidence presents a mixed question of fact and law. See *State v. Casarez*, 2008 WI App 166, ¶9, 314 Wis. 2d 661, 762 N.W.2d 385. We do not reverse the circuit court's factual findings unless clearly erroneous, but the application of constitutional principles to those findings is reviewed *de novo*. See *id.*, ¶9.

When officers make an investigative stop of a person, it is not an arrest and the standard for the stop is less than probable cause. *State v. Allen*, 226 Wis. 2d 66, 70-71, 593 N.W.2d 504 (Ct. App. 1999). The standard is reasonable suspicion, i.e., suspicion based on “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990) (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). When determining if the standard of reasonable

suspicion was met, those facts known to the officer must be considered together as a totality of circumstances. *Id.*

As with a stop, a frisk must be based on reasonable suspicion. *State v. Kyles*, 2004 WI 15, ¶7, 269 Wis. 2d 1, 675 N.W.2d 449. Once a suspect is justifiably stopped, the officer may conduct a frisk if he or she has reasonable suspicion that the stopped person is “armed and dangerous.” *Id.*

Groce sought to suppress all of the evidence that was obtained as a result of what he contended was an illegal stop and frisk. He argued that it was an anonymous telephone call that led police officers to the scene and argued that the call did not provide sufficient detail or specific information to warrant the stop and frisk.

Both a responding police officer and Groce testified at the suppression hearing. The officer testified consistently with the allegations in the complaint. He testified about his training and experience identifying people with guns. He stated that he was in the area as a result of an anonymous call indicating that individuals were fighting, at least two of whom had guns. The officer detailed his observations of Groce, which led him to believe that Groce was armed. Additionally, according to the officer, Groce did not verbally respond when he asked if Groce had a gun. The officer further noted that Groce appeared nervous insofar as his eyes were wide and he was breathing heavily. The officer explained that during the frisk that followed, they found a shotgun in Groce’s pants.

Groce testified that he was not surprised when he saw officers in the alley but admitted that his arm was clenched to his side, as the officer described. Groce claimed he was walking in the alley when he first saw the squad car and then he stopped. According to Groce, the squad car

sped up on its way toward him, the officers got out, asked if they could have a word with him, and soon after, grabbed him. He did not recall saying or doing anything after the officers asked whether he had a gun.

In denying the motion, the circuit court found the officer's testimony to be more credible than Groce's testimony. It found the officer had training to identify people with guns and gave weight to his testimony about Groce walking uncomfortably, with his arm clenched to his side, and with a surprised look on his face. The circuit court noted that it "put almost no weight on this anonymous call," explaining that all it really contributed to was "possibly getting the police to the location." The circuit court's comments reflected that it was the officer's observations of Groce along with his training and experience that resulted in his reasonable suspicion.<sup>2</sup>

The officer provided specific, articulable facts that, when added together, lead to a reasonable suspicion to justify the stop and frisk of Groce. There is no arguable merit to a challenge to the denial of the suppression motion.

### **B. Plea**

Next, we turn to Groce's guilty plea. There is no arguable basis to allege that Groce's plea was not knowingly, intelligently, and voluntarily entered. See *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986); WIS. STAT. § 971.08. He completed a plea questionnaire and waiver of rights form and an addendum, which the circuit court referenced during the plea hearing. See *State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App.

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<sup>2</sup> Based on its findings, the circuit court explained that this case is distinguishable from *State v. Pugh*, 2013 WI App 12, 345 Wis. 2d 832, 826 N.W.2d 418.

1987). The circuit court conducted a thorough plea colloquy addressing Groce'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* § 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 circuit court confirmed that Groce had reviewed the crime's elements as set forth in the jury instructions, which were included with the plea questionnaire and addendum. The circuit court told Groce that despite the parties' recommendations, it could sentence him to the maximum sentence and it detailed the parameters of the maximum penalty Groce faced. The parties stipulated that the facts in the complaint could serve as a basis for the plea. There would be no arguable merit to a challenge to the plea's validity and the record discloses no other basis to seek plea withdrawal.

### ***C. Sentencing***

We further conclude that there would be no arguable basis to assert that 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, or that the sentence was excessive, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

At sentencing, the circuit 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 circuit 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 circuit court’s discretion. *See Gallion*, 270 Wis. 2d 535, ¶41.

In its remarks, the circuit court pointed out while the underlying crime was serious, it was “not the most serious felony.” The circuit court discussed the dangerousness of shotguns and the reasons for making modified shotguns illegal. However, the circuit court noted that the “gravity here is not great” because Groce was not using the shotgun to commit another crime; instead, according to Groce, he was attempting to take it to his sister’s home in an effort to protect her. Despite his noble intentions, the circuit court concluded that Groce’s behavior was bad: “You are concealing a contraband gun in our community and you are doing it out on the street and it’s loaded. And even though you think you had heroic intentions, you were breaking the law. Now you were endangering not only yourself, the police, but people in the community.”

In determining the length of Groce’s sentence, the circuit court accounted for the fact that Groce cooperated with police after he was stopped, his lack of adult criminal convictions, his positive educational background, and the financial support he provided to his family. We agree with counsel’s assessment that to the extent the circuit court referenced the COMPAS report attached to the PSI, it did so to point out that it corroborated the other mitigating information that was presented.<sup>3</sup> Any reliance was, as counsel puts it, “entirely favorable” to Groce. There is no

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<sup>3</sup> “‘COMPAS’ stands for ‘Correctional Offender Management Profiling for Alternative Sanctions.’” *State v. Loomis*, 2016 WI 68, ¶4 n.10, 371 Wis. 2d 235, 881 N.W.2d 749.

basis to challenge the circuit court's use of COMPAS in this case. *See State v. Loomis*, 2016 WI 68, ¶8, 371 Wis. 2d 235, 881 N.W.2d 749.

Our review of the sentencing transcript leads us to conclude that there would be no merit to challenge the circuit court's compliance with *Gallion*. In accordance with the plea agreement, the State recommended a sentence of eighteen months of initial confinement and eighteen months of extended supervision. The circuit court sentenced Groce to seven months in the House of Correction with release privileges. This sentence was well within the limits of the maximum sentence that could have been imposed: namely, three years of initial confinement and three years of extended supervision. *See* WIS. STAT. §§ 941.28(2), 939.50(3)(h), 973.01(2)(b)8. & (2)(d)5. (2011-12).

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 Dustin C. Haskell is relieved of further representation of Groce in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

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