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**DISTRICT I**

June 21, 2017

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

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2017AP646-CRNM      State of Wisconsin v. Lanell Walker (L.C. # 2015CF5442)

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

Lanell Walker appeals from a judgment of conviction entered upon his guilty pleas to four charges. Appellate counsel, Mark S. Rosen, has filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2015-16).<sup>1</sup> Walker was advised of his right to file a response, but he has not responded. Upon this court's independent

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

review of the record, as 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.

On December 7, 2015, around 11:20 p.m., Walker and his co-actor, Steven Bunn, wearing masks, approached T.A. as she got out of her car at her home. They forced her into the home at gunpoint and asked her, "Where he at?" in reference to T.A.'s husband, J.S., who was apparently dealing drugs at the time. One of the men went into the bedroom and started beating J.S. with a gun, asking for "weed" and money. J.S. said he had neither. One of the men took T.A. to the basement and asked her, "Where the dope at?" The other man brought J.S. down to the basement, and J.S. began removing the ceiling. While he was doing that, one of the men began beating him in the head with the gun, as a result of which J.S. lost the vision in his left eye. Eventually, both J.S. and T.A. were tied up in their basement.

While in the basement, there was a knock at the door; T.A. said she thought it might be her sister. Bunn sent Walker up to "get that bitch," but it was the police at the door, responding to a home invasion call evidently placed by T.A.'s son. Walker left his gun in the sleeve of a jacket near the door, then tried to flee past police but was apprehended. Bunn exchanged gunfire with police before committing suicide in the basement. Police recovered Walker's weapon from the jacket. After being given appropriate warnings, Walker gave a statement that corroborated much of T.A.'s version of events.

Walker was charged with five offenses: armed burglary as party to a crime, two counts of attempted armed robbery with the use of force as party to a crime, substantial battery as party to a crime, and possession of a firearm by a felon. In exchange for his guilty pleas to the latter four charges, the State agreed to dismiss and read in the burglary and to limit its sentence

recommendation to twenty years' imprisonment. Walker would be free to argue for a sentence he felt was appropriate. The circuit court accepted Walker's pleas and sentenced him to twenty years' imprisonment.

Appellate counsel identifies two potential issues: whether there is any basis for a challenge to the validity of Walker's guilty pleas and whether the circuit court appropriately exercised its sentencing discretion. We agree with counsel's conclusion that these issues lack arguable merit.

There is no arguable basis for challenging Walker's plea as not knowing, intelligent, or voluntary. See *State v. Bangert*, 131 Wis.2d 246, 260, 389 N.W.2d 12 (1986). Walker 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 offenses; jury instructions were attached.<sup>2</sup> The form correctly acknowledged the maximum penalties Walker 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 also conducted an appropriate plea colloquy as

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<sup>2</sup> We note that trial counsel reviewed with Walker WIS JI—CRIMINAL 1220, the instruction for battery, rather than WIS JI—CRIMINAL 1222, the instruction for substantial battery. Appellate counsel thus incorrectly stated in the no-merit report that the plea questionnaire “contained all of the jury instructions applicable to these offenses.” Nevertheless, there is no arguable basis for a challenge to the plea on this ground.

The primary difference as would be relevant to any such challenge is that battery requires the defendant to have caused bodily harm while substantial battery requires the defendant to have caused substantial bodily harm. The circuit court, during the plea colloquy, asked Walker whether he understood that the State would have to prove that Walker, “as party to a crime caused *substantial* bodily harm to [J.S.] by an act done with intent to cause bodily harm to him.” (Emphasis added.) Walker affirmatively acknowledged those elements. Additionally, though trial counsel attached the incorrect battery instruction, she did advise Walker of the appropriate penalty for substantial battery.

required by WIS. STAT. § 971.08, *Bangert*, and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14.

The plea questionnaire and waiver of rights form and addendum, along with the court's colloquy, appropriately advised Walker 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 a plea is knowing, intelligent, and voluntary. There is no arguable merit to a challenge to the plea's validity.

The other potential issue counsel identifies 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.

Our review of the record satisfies us that the circuit court properly exercised its sentencing discretion. It noted that Walker did not have much of a criminal record, just one prior felony for dealing heroin. It noted that he had taken responsibility through his plea and appeared to be genuinely remorseful. However, the circuit court also rejected Walker's "excuse" that he

was drunk and high, and noted that the home invasion was brutal and caused J.S. to lose his vision. The fact that police interrupted the robberies reduced some possible penalties but not the seriousness of the offenses. The circuit court further commented that people in the community should not have to worry about home invasion.

The maximum possible sentence Walker could have received was fifty-three and one-half years' imprisonment. The sentence totaling twenty years' imprisonment is well within the range authorized by law, *see State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and is not so excessive so as to shock the public's sentiment, *see Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). There would be no arguable merit to a challenge to the sentencing court's discretion.

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 Mark S. Rosen is relieved of further representation of Walker 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*