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DISTRICT I

July 18, 2017

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Lawrence Wilson Jr.
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You are hereby notified that the Court has entered the following opinion and order:

2016AP790-CRNM State of Wisconsin v. Lawrence Wilson, Jr., a/k/a Lawrence Wilson (L.C. # 2014CF3945)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Lawrence Wilson, Jr., a/k/a Lawrence Wilson, appeals from a judgment of conviction for one count of possession of THC (marijuana) as a second or subsequent offense, as a party to a

crime, contrary to WIS. STAT. §§ 961.41(3g)(e) and 939.05 (2013-14).[1] Wilson's postconviction/appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967).[2] Wilson has not filed a response. We have independently reviewed the record and the no-merit report as mandated by ***Anders*** and we conclude that there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm.

Wilson was driving his sister's car when police officers conducted a traffic stop and arrested Wilson for operating after revocation. The officers searched the car and found loose marijuana next to two cigars on the passenger seat. They also found marijuana and cocaine in a small bag under the cup holder in the center console. Wilson was charged with possessing both marijuana and cocaine, as second or subsequent offenses, as a party to a crime. The jury found Wilson guilty of possessing marijuana, but not guilty of possessing cocaine.[3]

The trial court subsequently reviewed certified records of Wilson's prior drug conviction and found that Wilson was guilty of possession as a second or subsequent offense. The trial

[1] While this appeal was pending, Wilson moved this court to amend the caption to remove the suffix "Jr." from his name. His motion asserted that the suffix is not part of his name and that this issue was brought to the trial court's attention on two occasions. We declined to eliminate the suffix because "Lawrence Wilson, Jr." is the name used "in key circuit court documents, including the criminal complaint, the information, and the judgment of conviction." However, we amended the caption to "Lawrence Wilson, Jr., a/k/a Lawrence Wilson."

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

[2] The no-merit report was filed by attorney John R. Breffeilh, who has been replaced by attorney Nicole M. Masnica as Wilson's appellate counsel.

[3] The parties and the trial court speculated that the jury found Wilson possessed the marijuana that was on the car's seat, but not the marijuana and cocaine in the hidden bag.

court sentenced Wilson to six months in the House of Correction for the marijuana possession, "consecutive to any other sentence," including a reconfinement sentence imposed after Wilson's extended supervision in a prior case was revoked.

Represented by postconviction/appellate counsel, Wilson moved to vacate a provision in the judgment of conviction that required him "to pay the 'costs, fees, assessments, and surcharges' as a condition of extended supervision" in his prior case. The trial court granted the motion and the judgment was amended.

Postconviction/appellate counsel subsequently filed a no-merit notice of appeal. Counsel's lengthy no-merit report addresses four issues:

> 1. Whether the circuit court erred in denying Mr. Wilson's two pretrial motions to suppress.
>
> 2. Whether the jury was properly selected and instructed to try Mr. Wilson for possession of marijuana.
>
> 3. Whether the evidence was sufficient to support a guilty verdict for possession of marijuana.
>
> 4. Whether Mr. Wilson has grounds to seek resentencing.

Postconviction/appellate counsel concludes there would be no merit to challenge the rulings on the suppression motions, the jury selection process, the sufficiency of the evidence, or Wilson's sentence. 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 the pretrial motions to suppress. Wilson's first motion alleged that the officers lacked reasonable suspicion to conduct a traffic stop. The trial court accepted the testimony of the police officer who was the only witness at the motion hearing. The trial court

found that the stop was justified based on the officer's observation of two traffic violations: speeding and failing to stop in time at a stop sign. We agree with counsel that there would be no arguable merit to challenging the trial court's ruling. "[R]easonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops." ***State v. Houghton***, 2015 WI 79, ¶30, 364 Wis. 2d 234, 868 N.W.2d 143. The officer's testimony supports the trial court's finding that the officer had the requisite "reasonable suspicion" to justify a stop. *See* ***id.***

Wilson's second motion sought suppression of statements made to the officers when Wilson was in the back of the squad car, before he had been read the ***Miranda*** warnings.[4] The officer testified that Wilson asked why he was being arrested and the officer told him "it was because he shouldn't be driving and because of what I found in the vehicle." Wilson then told the officer that the car was not his "and that he never drives it." At issue at the motion hearing was whether Wilson made those statements spontaneously or in response to questioning from the officer. The trial court accepted the officer's uncontroverted testimony and concluded that Wilson was not being interrogated when he offered those statements. We agree with the no-merit report that there would be no arguable merit to challenging that ruling, because the safeguards of ***Miranda*** only "come into play whenever a person in custody is subjected to either express questioning or its functional equivalent," *see* ***Rhode Island v. Innis***, 446 U.S. 291, 300-01 (1980), and the officer's testimony supports the trial court's finding that such questioning did not occur in this case.

[4] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

Next, we agree with postconviction/appellate counsel that there would be no basis to challenge the jury selection process, which counsel details in the no-merit report, or the sufficiency of the evidence. The existence of marijuana on the seat of the car supports the jury's finding that Wilson possessed that drug, and Wilson even admitted to the officers during his recorded interrogation that he smoked marijuana earlier in the day.

Finally, we consider the sentence imposed. 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.

Here, 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 discussed the traffic stop and Wilson's possession of marijuana, as well as his age, education, prior criminal history, experience on probation, and treatment needs. It also

addressed society's "right to be protected from people who violate the law and reviolate the law." Our review of the sentencing transcript leads us to conclude 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 up to three-and-one-half years of imprisonment, but it imposed only six months, which was less than the nine months that both the State and trial counsel recommended. 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.").

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 Nicole M. Masnica is relieved of further representation of Wilson in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals