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August 30, 2017

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

2017AP855-CRNM State of Wisconsin v. Ross A. Adee (L.C. # 2015CF5097)

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

Ross A. Adee appeals from a judgment of conviction, entered upon his guilty plea, on one count of possession of child pornography. Adee also appeals from an order denying a portion of his postconviction motion. Appellate counsel, Attorney Dustin C. Haskell, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE

809.32 (2015-16).¹ Adee was advised of his right to file a response, but he has not responded. Upon this court's independent review of the record, as mandated by *Anders*, and counsel's report, we conclude that there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment and order.

Adee was apprehended in an internet sting operation, conducted in Racine County, wherein an investigator posed as the mother of two young girls and solicited someone to have sex with the children. Adee was arrested when he showed up to meet the mother and girls. He was charged with multiple offenses in Racine County. Related to this investigation, South Milwaukee police obtained a warrant for Adee's tractor trailer, parked at his place of employment in South Milwaukee. One of the items seized pursuant to the warrant was a laptop that was eventually determined to contain 988 images or videos of suspected child pornography. Adee was charged with one count of possession of child pornography, contrary to WIS. STAT. § 948.12(1m); an information later added four additional counts of the same offense.

Adee agreed to resolve his case with a plea. In exchange for his guilty plea to one count of possession of child pornography, the State would dismiss and read in the remaining counts and recommend a sentence with five years' initial confinement, to run concurrent with whatever sentence Adee received from Racine County. Adee would be free to argue the sentence. The court accepted Adee's guilty plea and later sentenced him to five years' initial confinement and five years' extended supervision, concurrent with his Racine County sentences.

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

Adee filed a postconviction motion seeking sentence credit and a determination that he was eligible for the substance abuse program. The circuit court granted the credit requested but denied Adee's eligibility for the substance abuse program. Adee appeals.

The first potential issue counsel discusses is whether Adee should be allowed to withdraw his plea because it was not knowing, intelligent, and voluntary. Our review of the record—including the plea questionnaire, waiver of rights form, supplemental documents, and plea hearing transcript—confirms that the circuit court complied with its obligations for taking a guilty plea, pursuant to WIS. STAT. § 971.08, *State v. Bangert*, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and subsequent cases, as collected in *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Adee was appropriately advised of all information he was required to be given. There is no arguable merit to a claim that the circuit court failed to fulfill its obligations in accepting a plea or that Adee's plea was anything other than knowing, intelligent, and voluntary.

The next issue counsel addresses 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 id.*

Our review of the record confirms that the circuit court appropriately considered relevant sentencing objectives and factors. It agreed with the parties that concurrent sentences were appropriate because, but for the county line, the offenses in this case would likely have been charged in Racine County, but it also determined that the ten-year sentence requested was appropriate upon consideration of relevant sentencing factors. The ten-year sentence imposed is well within the twenty-five year 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). Additionally, Adee affirmatively joined the State's request for the ten-year sentence, and a defendant who affirmatively joins or approves a sentence recommendation cannot attack the sentence on appeal. *See State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). There would be no arguable merit to a challenge to the circuit court's sentencing discretion.

Finally, counsel addresses whether this court should remand the case for a new determination on Adee's eligibility for the substance abuse program. The circuit court commented that it followed the parties' joint sentence recommendation because it believed five years of initial confinement was a sufficient, but the minimum, amount of time necessary to protect the public. Thus, the circuit court stated that deeming Adee eligible for a program that would permit an opportunity for early release sooner than the five years would unduly depreciate the seriousness of the offense.

Whether to make a defendant eligible for the substance abuse program is a matter of circuit court discretion. *See State v. Owens*, 2006 WI App 75, ¶¶5-7, 291 Wis. 2d 229, 713 N.W.2d 187; *see also* 2011 Wis. Act 38, § 19 (renaming the earned release program as the substance abuse program). Specifically, it is part of the circuit court's sentencing discretion. *See Owens*, 291 Wis. 2d 229, ¶7. The circuit court's rationale for denying Adee's eligibility for the substance abuse program reflects a proper exercise of that 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 and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved of further representation of Adee 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