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**DISTRICT I**

November 8, 2017

*To*:

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

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2017AP1346-CRNM State of Wisconsin v. Keavin Lenny Cotton (L.C. # 2015CF2742)

Before Brennan, P.J., Brash 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).**

Keavin Lenny Cotton appeals from a judgment of conviction, entered upon his guilty plea, on one count of possession of tetrahydrocannabinols (THC) as a second or subsequent offense. Appellate counsel, Pamela Moorshead, 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] Cotton 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 there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

On April 16, 2015, Milwaukee police went to the lower level of a duplex believed to be Cotton's residence; Cotton was wanted on a warrant for delivery of a controlled substance. There was no answer when police knocked on the door. The officers then made contact with the landlord, who lived in the upper unit. The landlord stated that Cotton lived in the lower unit and that he believed Cotton was home. The landlord let police into a common hallway so that officers could knock on an inner door to the lower unit.

The inner door was open, and police could smell the odor of marijuana coming from the residence. Officers entered to look for Cotton. In the dining room, a detective observed a clear jar containing suspected marijuana. Other officers spotted suspected marijuana blunts in ashtrays. Police froze the scene and obtained a search warrant.

The search warrant was executed with assistance from federal law enforcement agents. Police recovered several mason jars with suspected marijuana residue, the clear jar from the dining room, several blunts from around the apartment, two grinders, four cell phones, a digital scale, and a .40-caliber handgun with ammunition. Police also discovered mail and a parking ticket with Cotton's name. In the basement, which was a common area, police recovered two additional jars containing suspected marijuana. Field tests were positive for THC. The clear jar

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

from the dining room contained fifty grams of marijuana; the jars from the basement held 500 grams.

Cotton was charged with keeping a drug house and possession of THC as a second or subsequent offense. The State offered Cotton a plea deal: in exchange for his guilty plea to the possession offense in this case, the State would dismiss and read in both the drug house charge and, from a separate case, the delivery charge for which the arrest warrant had been issued. The State would argue for incarceration but leave the length to the court, and Cotton would be free to argue the sentence. Cotton accepted the offer. The circuit court accepted Cotton's guilty plea and ultimately imposed the maximum sentence of one and one-half years' initial confinement and two years' extended supervision.

Counsel discusses two potential issues: whether there is any basis for a challenge to the validity of Cotton's guilty plea 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 Cotton's guilty plea as not knowing, intelligent, and voluntary. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Cotton 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. The form correctly acknowledged the maximum penalties Cotton 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 a plea colloquy, as required by WIS. STAT. § 971.08, ***Bangert***, and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. Counsel

notes that the circuit court did not expressly review with Cotton the elements of possession of THC. However, the jury instructions for that offense were included with the plea questionnaire and, during the colloquy, the circuit court expressly called Cotton's attention to the plea questionnaire, addendum, and the "jury instructions that list what we call the elements of the offense[.]" The circuit court asked Cotton whether he had reviewed those documents with trial counsel and whether he understood them. Cotton answered affirmatively. The circuit court also asked Cotton whether he had any questions about the documents. Cotton said that he did not. The express reference to the jury instructions with the elements suffices for ensuring Cotton understood the nature of the offense to which he was pleading. *See* ***Bangert***, 131 Wis. 2d at 268.

The plea questionnaire and waiver of rights form and addendum, the jury instructions, and the circuit court's colloquy appropriately advised Cotton 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 issue counsel discusses 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, *see* ***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 primary factors including the gravity of the offense, the character of the offender, and the protection of the public, and may consider several additional factors. *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.

The circuit court observed that Cotton had a "lengthy history related to controlled substances" dating back to at least 2002. It noted that Cotton followed a pattern of confinement, release to supervision, and commission of a new drug crime while on supervision. Based in part on that pattern, the circuit court concluded that protection of the community was a main sentencing goal, along with Cotton's rehabilitation. The circuit court also expressed that there should be an element of deterrence, to both Cotton and others, in the sentence. While the circuit court was encouraged by Cotton's acceptance of responsibility, family support, and developing career path, the circuit court noted that it could not ignore Cotton's track record, which suggested that probation would be inadequate for accomplishing the sentencing goals. The circuit court also considered it aggravating that the multiple phones and digital scale suggested an intent to deliver, even though Cotton was not so charged, and that this drug activity was occurring in a home where Cotton's young child lived.

Cotton's three-and-one-half-year sentence does not exceed the maximum allowed by law. *See* WIS. STAT. §§ 939.50(3)(i), 973.01(2)(b)9., 973.01(2)(d)6., 973.13. In light of the sentencing factors articulated by the circuit court, all of which were proper considerations, the sentence imposed would not shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Accordingly, there would be no arguable merit to a challenge to the circuit court's sentencing 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 Pamela Moorshead is relieved of further representation of Cotton in this matter. *See* WIS. STAT. RULE 809.32(3).

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

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