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November 28, 2017

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

2017AP236-CRNM State of Wisconsin v. Rory Jackson
(L.C. 2015CM4466)

Before Kessler, J.¹

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).

Rory Jackson appeals a judgment entered after he pled guilty to carrying a concealed weapon (CCW). *See* WIS. STAT. § 941.23(2). Jackson's postconviction and appellate lawyer, Assistant State Public Defender Christopher D. Sobic, has filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Jackson did not

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

respond. After independently reviewing the record and the no-merit report, we conclude there are no issues of arguable merit that could be raised on appeal and summarily affirm the judgment of conviction. *See* WIS. STAT. RULE 809.21.

As set forth in the criminal complaint, which provided a factual basis for Jackson’s plea, police were dispatched following a report of a “subject with a gun.” Officers subsequently located Jackson in the area described by the caller and matching the description the caller had provided. When asked whether he had any weapons, Jackson told police he had a pistol in his front waistband. An officer then removed the pistol, which had ten rounds in the magazine. Jackson did not have a valid CCW permit for the firearm.

An officer spoke with a witness at the scene who reported seeing Jackson standing in front of her home. When the witness’s boyfriend told Jackson to leave, Jackson pulled the pistol from his waistband and pointed it at him.

Jackson was initially charged with CCW and disorderly conduct, with use of a dangerous weapon. In exchange for Jackson’s guilty plea to CCW, the State moved to dismiss and read in the disorderly conduct charge. The State additionally agreed to recommend that Jackson serve four to six months in the House of Correction. The plea negotiations left Jackson free to argue at sentencing.

The circuit court accepted Jackson’s plea and dismissed and read in the disorderly conduct charge. The circuit court sentenced Jackson to twelve months of probation with an imposed and stayed sentence of four months in the House of Correction.

In his no-merit report, counsel addresses whether there would be any arguable merit to an appeal on two issues: (1) the validity of Jackson’s plea and (2) the circuit court’s exercise of

sentencing discretion. For reasons explained below, we agree with the conclusion that there would be no arguable merit to pursuing these issues on appeal.

Plea

Counsel first addresses whether Jackson has an arguably meritorious basis for challenging his plea on appeal. To be valid, a guilty plea must be knowing, intelligent, and voluntary. See *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Jackson 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). A list detailing the applicable elements was attached to the form. The form listed, and the court explained, the maximum penalties Jackson faced. The form, along with an addendum, further specified the constitutional rights that Jackson was waiving with his plea. See *Bangert*, 131 Wis. 2d at 270-72.

An argument could be made that the circuit court failed to comply with the procedural mandate of WIS. STAT. § 971.08(1)(c), which requires the court, before accepting a guilty plea, to:

Address the defendant personally and advise the defendant as follows: “If you are not a citizen of the United States of America, you are advised that a plea of guilty or no contest for the offense with which you are charged may result in deportation, the exclusion from admission to this country or the denial of naturalization, under federal law.”

See *State v. Douangmala*, 2002 WI 62, ¶21, 253 Wis. 2d 173, 646 N.W.2d 1 (explaining that § 971.08(1)(c) “not only commands what the court must personally say to the defendant, but the language is bracketed by quotation marks, an unusual and significant legislative signal that the statute should be followed to the letter”) (citation omitted). However, to be entitled to plea withdrawal on this basis, Jackson would have to show “that the plea is likely to result in [his]

deportation, exclusion from admission to this country or denial of naturalization.”
See § 971.08(2). There is no indication in the record that Jackson can make such a showing.

Beyond the missing deportation warning, the circuit court 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. 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.

Sentencing

The next issue the no-merit report discusses is the circuit court’s exercise of sentencing discretion. We agree 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 this case, the circuit court applied the standard sentencing factors and explained their application in accordance with the framework set forth in *Gallion* and its progeny. In doing so, the circuit court highlighted the need for punishment “for bringing the firearm—not just for having it but for introducing it into an argument where these people certainly felt threatened and for good reason.” The circuit court stressed to Jackson: “[W]hat you did was to take a totally ordinary pedestrian situation and introduce into that conflict a deadly weapon.” The result, the circuit court concluded “put[] the public safety significantly at risk.”

The circuit court sentenced Jackson to twelve months of probation with an imposed and stayed sentence of four months in the House of Correction. This was well within the nine month sentence Jackson could have received. *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.”). There would be no arguable merit to challenging the circuit court’s exercise of its 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 Christopher D. Sobic is relieved of further representation of Jackson 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

