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January 17, 2018

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

2016AP2141-CRNM State of Wisconsin v. Deshon O. Baggett (L.C. # 2015CF1183)

Before Lundsten, P.J., Sherman and Blanchard, 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).

Counsel for Deshon Baggett has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16),¹ concluding that no arguably meritorious grounds exist for challenging Baggett's judgment of conviction or the order denying his postconviction motion for sentence

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

modification. Baggett was sent a copy of the no-merit report but has not filed a response. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude that there is no arguable merit to any issue that could be raised on appeal.

Baggett was convicted, upon entry of a guilty plea, of armed robbery with use of force as a party to a crime. The no-merit report addresses: (1) whether there is any basis for challenging Baggett's guilty plea; (2) whether the circuit court properly exercised its sentencing discretion; and (3) whether Baggett has a right to sentence modification. We agree with counsel's analysis of these issues.

The record discloses no arguable basis for challenging Baggett's guilty plea. Baggett executed a plea questionnaire and waiver of rights form in which he acknowledged the elements of the offense, the penalties that could be imposed, and the constitutional rights he waived by entering a guilty plea. At the plea hearing, the court followed the procedure for accepting a guilty plea set out in *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986). The court conducted a colloquy to ascertain that Baggett understood the form he signed, the elements of the offense, and the consequences of his plea. The court confirmed Baggett's understanding that the court could impose the maximum sentence. Additionally, the court found that a sufficient factual basis existed in the criminal complaint to support the conclusion that Baggett committed the crime charged. Our independent review of the record reveals no other arguably meritorious basis for challenging Baggett's plea.

We also agree with counsel that there would be no arguable merit to a claim that the circuit court improperly exercised its sentencing discretion. In imposing sentence, the court considered the seriousness of the offense, Baggett's character, and the need to protect the public.

The court imposed seven years of initial confinement and five years of extended supervision, which was well below the maximum potential sentence. *See* WIS. STAT. §§ 943.32(2) (classifying armed robbery as a Class C felony); 973.01(2)(b)3. and (d)2. (providing maximum terms of 25 years of initial confinement and 15 years of extended supervision for a Class C felony) (2013-14). Under the circumstances, the sentence is not so excessive or unreasonable as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Finally, there would be no arguable merit to challenging the order denying Baggett's postconviction motion for sentence modification based on a new factor. A new sentencing factor is a fact or set of facts highly relevant to the imposition of sentence but not known to the trial judge at the time of sentencing, either because it was not then in existence or because it was unknowingly overlooked by all of the parties. *State v. Harbor*, 2011 WI 28, ¶¶40, 42, 48, 333 Wis. 2d 53, 797 N.W.2d 828. The defendant bears the burden of establishing a new factor by clear and convincing evidence. *Id.*, ¶36. Whether a particular set of facts constitutes a new factor is a question of law which we review de novo. *Id.*, ¶33.

Here, Baggett cannot establish the existence of a new factor by clear and convincing evidence. Baggett argued in his postconviction motion that "recent literature on the special neural characteristics of 'emerging adults'" was a new factor entitling him to sentence modification. Baggett, who was nineteen years old at the time of the robbery, submitted a memorandum to the court that summarized research showing that the human brain continues to develop well into a person's twenties. However, the transcript of the sentencing hearing reflects that the court already considered Baggett's age as a mitigating factor and, thus, one can infer that the sentencing judge knew he was not dealing with a fully mature individual. In addition, all of the studies cited in the memorandum submitted by Baggett were published prior to the

sentencing hearing, with some of the studies being over a decade old. Based on all of the above, we agree with the circuit court that Baggett was not entitled to sentence modification based on a new factor.

Our independent review of the record discloses no other potential issues for appeal. Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Kaitlin Lamb is relieved of any further representation of Deshon Baggett 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
Acting Clerk of Court of Appeals