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DISTRICT I

April 5, 2018

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

2017AP348-CRNM State of Wisconsin v. Terrell D. Currin (L.C. # 2014CF2286)

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).

Terrell D. Currin appeals from a judgment, entered upon a jury's verdict, convicting him on one count of possession of a firearm by a felon as a repeater. Appellate counsel, Cheryl A. Ward, 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 Currin was advised of his right to file a response, but he

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

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.

Three Milwaukee Police Department officers on bike patrol heard the distinct sound of a shotgun being "racked." They spotted three individuals in a gangway between two houses. The officers were able to see that the individuals were bent down or crouching, manipulating something on the ground. The racking sound was heard again. Two officers went to the rear of the gangway while one stayed at the front. When one officer said, "Hi, police," the individuals attempted to flee but were contained and arrested. A blue bag was located where the individuals had been, and a shotgun was sticking out of the bag. The gun, bag, and five shotgun rounds from inside the bag were collected and inventoried.

Currin was identified as one of the three individuals. After being interviewed separately, Currin and co-actor Levon Sanders were taken back to their holding cells. As one of the officers left the area, he overheard Currin say, "I told you we were playing with that thing too long." Currin, who had a prior felony conviction for possession of a firearm by a felon, was charged with one count of possession of a firearm by a felon as a repeater. The matter was tried to a jury, which convicted Currin of the offense as charged. The trial court sentenced him to five years' imprisonment, divided as thirty months' initial confinement and thirty months' extended supervision, consecutive to any other sentence.

The no-merit report addresses whether sufficient evidence supports the jury's verdict. It correctly sets forth the standard of review for a jury verdict. It does not expressly identify the elements of possession of a firearm by a felon, which are that the defendant possessed a firearm

and that the defendant had been convicted of a felony prior to the date of the offense. *See* Wis JI—CRIMINAL 1343. The report appropriately identifies evidence sufficient to support both elements, including Currin’s stipulation to a prior felony conviction. The report does not address whether the stipulation was validly entered, but our review of the record, which includes a thorough colloquy between Currin and the trial court, satisfies us that the stipulation was appropriate. We have further not identified any procedural trial errors, such as issues in jury selection, admission of evidence, jury instructions, or Currin’s waiver of the right to testify, that would require further analysis or discussion.

The no-merit report also addresses the trial court’s exercise of 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 several primary factors including the gravity of the offense, the character of the offender, and the protection of the public, and may consider a variety of 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 trial court’s discretion. *See id.*

Our review of the record confirms that the court appropriately considered relevant sentencing objectives and factors. It explained why probation was not appropriate and why the sentence would be consecutive. The five-year sentence imposed is well within the fourteen-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). There would be no arguable merit to a challenge to the trial 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 previously imposed hold in this matter is lifted.

IT IS FURTHER ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Cheryl A. Ward is relieved of further representation of Currin in this matter. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals