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DISTRICT I

May 17, 2018

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

2018AP370-CRNM State of Wisconsin v. Bartholomew Clyde Watson
(L.C. # 2014CF2482)

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).

Bartholomew Clyde Watson appeals from a judgment, entered upon his guilty plea, convicting him on one count of delivery of between one and five grams of cocaine as a party to a crime. Appellate counsel, Matthew A. Lynch, 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] Watson 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.

Watson was named in a thirty-nine-page complaint that charged thirteen defendants in twenty-one counts. Watson was charged with one count of delivery of between one and five grams of cocaine as a party to a crime, one count of delivery of three grams or less of heroin, and one count of delivery of three grams or less of heroin as a party to a crime. The complaint was issued as a result of an investigation into a drug trafficking organization that had been operating in the Milwaukee vicinity for over ten years and a series of controlled buys utilizing confidential informants. The State believed Watson was one of the "tier 2 co-conspirators" directly below the head of the organization. The complaint details facts obtained during each controlled buy through audio and video recordings and through the informants' reports.

Watson ultimately agreed to resolve his charges through a plea agreement. In exchange for his guilty plea to the cocaine charge, the State would dismiss and read in the two heroin charges and refrain from charging two specific additional offenses or any other possible charges from this particular investigation. Further, the State agreed to recommend incarceration, but with the length and location left up to the court, and Watson would be free to argue the length of the sentence. The circuit court accepted Watson's plea and imposed a sentence of eighteen months' initial confinement and eighteen months' extended supervision.

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

Appellate counsel addresses two potential appellate issues: whether Watson's plea was "knowing and voluntary" and whether the circuit court properly exercised its sentencing discretion. We agree with counsel that these issues lack arguable merit.

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). Our review of the record—including the plea questionnaire and waiver of rights form and plea hearing transcript—confirms that the circuit court complied with its obligations for taking a guilty plea, pursuant to WIS. STAT. § 971.08, ***Bangert***, 131 Wis. 2d at 261-62, and subsequent cases, as collected in ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The circuit court also appropriately cautioned Watson about the effects of read-in offenses, as recommended by ***State v. Straszkowski***, 2008 WI 65, ¶97, 310 Wis. 2d 259, 750 N.W.2d 835.

We note that there was some discussion regarding the factual basis for Watson's plea. The complaint alleged that when the informant entered one of the drug houses, he saw Watson sitting at a kitchen table, bagging up cocaine base and counting money. One of the investigators corroborated this observation from recorded video. The informant also watched Watson give $400 worth of cocaine to someone with the nickname "Poochie."

At the plea hearing, the circuit court asked Watson, "What were you doing that makes you guilty as far as the delivery of some cocaine?" Watson initially answered, "Delivering." The circuit court explained that the State alleged Watson had been bagging the cocaine, then gave Watson a chance to confer with counsel. Counsel reported that Watson disagreed he was bagging cocaine, but was willing to admit "that he brought the cocaine there that he knows it was later sold." He admitted giving cocaine to co-defendant Marquis Whittley. The circuit court

then reviewed with Watson the facts he was admitting: he had cocaine in his possession, which he transferred (delivered) to Whittley; the substance was, in fact, cocaine; Watson knew or believed the substance to be cocaine; and the weight was between one and five grams. Watson acknowledged each of the elements, which are sufficient to satisfy the factual basis for the charge to which he pled.

Based on the foregoing, there is no arguable merit to a claim that the circuit court failed to fulfill its obligations for taking a guilty plea or that Watson's plea was anything other than knowing, intelligent, and voluntary.

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* ***State v. Gallion***, 2004 WI 42, ¶41, 270 Wis. 2d 535, 678 N.W.2d 197. 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 several other 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* ***id.***

Our review of the record confirms that the circuit court appropriately considered relevant sentencing objectives and factors and that the court considered no improper factors. The eighteen-month sentence imposed is well within the twelve-and-one-half-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 as to shock the public's sentiment, *see* ***Ocanas v. State***, 70 Wis. 2d 179, 185,

233 N.W.2d 457 (1975). Watson also stipulated to $300 in restitution. There would be no arguable merit to a challenge to the 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 Matthew A. Lynch is relieved of further representation of Watson 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