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**DISTRICT I**

May 31, 2018

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

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2018AP346-CRNM State of Wisconsin v. Maurice G. Taylor (L.C. # 2016CF3947)

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).**

Maurice G. Taylor appeals from a judgment, entered upon his guilty plea, convicting him on one count of homicide by intoxicated use of a motor vehicle. Appellate counsel, Mark S. Rosen, 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] Taylor 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 September 3, 2016, police responded to a single-car accident at North 32nd Street and West Wisconsin Avenue. According to witnesses, a Mercury Cougar traveling at a high rate of speed ran a red light and may have struck something before the driver lost control and struck a light post. Taylor, identified by a witness as the driver, was found in the roadway next to the driver's door. The rear-seat passenger, R.N., suffered "an injury to his head." The front-seat passenger, Taylor's brother Dawrel, suffered a "head injury" to which he later succumbed. The medical examiner described Dawrel's blunt-force injury as "separation of the spine from the head" and attributed it to the accident. Police noticed alcohol on Taylor's breath and obtained a warrant to draw his blood. Taylor's blood-alcohol level was .186.

Taylor was charged with one count of homicide by intoxicated use of a vehicle and one count of homicide by use of a vehicle while having a prohibited alcohol concentration. *See* WIS. STAT. § 940.09(1)(a), (b). Taylor ultimately agreed to resolve the matter with a plea. In exchange for his guilty plea to homicide by intoxicated use of a vehicle,[2] the State would request a presentence investigation report and recommend a sentence of five years' initial confinement

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

[2] It does not appear that the second count was the subject of formal negotiations, likely because while Taylor could be charged with both offenses, the law permits a conviction on only one of them. *See* WIS. STAT. § 940.09(1m)(a)-(b). The circuit court therefore dismissed the second count at the plea hearing.

and five years' extended supervision. Taylor would be free to argue the length of the sentence. The circuit court accepted Taylor's plea and ultimately imposed the sentence recommended by the State. Taylor appeals.

Counsel has identified two potential issues for appeal: whether Taylor's plea was knowing, intelligent, and voluntary and whether Taylor's sentence was excessive and an erroneous exercise of the circuit court's sentencing discretion. We agree with counsel's conclusion that these issues lack arguable merit.

The no-merit report adequately identifies the appropriate legal standards for a knowing, intelligent, and voluntary plea. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). The report also appropriately summarizes the record with respect to the circuit court's obligations when conducting a colloquy with the defendant on a guilty or no-contest plea. *See* ***id.*** at 261-62; *see also* WIS. STAT. § 971.08 and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Our review of counsel's report and the record—including the plea questionnaire and waiver of rights form, the addendum, the attached jury instructions, and the plea hearing transcript—confirms that the circuit court complied with its obligations for taking a guilty plea.[3] There is no arguable merit to a claim that Taylor's plea was anything other than knowing, intelligent, and voluntary.

[3] Indeed, we commend the circuit court for a particularly thorough colloquy in this case. We particularly note the great care taken by the circuit court to ensure Taylor was thinking clearly and that he wanted to enter the plea at that time.

The other issue counsel raises is whether the circuit court erroneously exercised its sentencing discretion.[4] *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 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 may consider several 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 circuit court's discretion. *See* ***Ziegler***, 289 Wis. 2d 594, ¶23.

The circuit court reviewed the presentence investigation report and a psychological report submitted by the defense. It heard from Taylor's mother, sister, and brother, and from Taylor himself, along with counsel's arguments. The circuit court noted that this was not the most aggravated offense, because there were ways in which it could have been worse, but it was still a serious offense because someone had died and because Taylor—who had never been issued a Wisconsin driver's license and who had fourteen prior operating-after-revocation citations as a result—should not have been driving. The circuit court described Taylor's character as "complicated." It acknowledged that he had a lot of family support and that many of Taylor's

[4] Counsel argues that the sentence constituted an "abuse of discretion"; however, the supreme court replaced the phrase "abuse of discretion" with "erroneous exercise of discretion" more than twenty-five years ago. *See* ***City of Brookfield v. Milwaukee Metro. Sewerage Dist.***, 171 Wis. 2d 400, 423, 491 N.W.2d 484 (1992).

traffic violations came about because he was transporting himself for medical treatments. The circuit court accepted Taylor's remorse and recognized that he was suffering greatly because of the death of his brother.

The circuit court determined that deterrence to others was the stronger interest in a case like this and, therefore, a "strong sentence" was warranted. It rejected defense counsel's recommendation for probation, explaining that the positive aspects of Taylor's character did not outweigh the public's need for a strong sentence, and that probation would unduly depreciate the seriousness of the offense. The circuit court thus ultimately agreed with the State's recommendation and imposed five years' initial confinement and five years' extended supervision.

The maximum possible sentence Taylor could have received was twenty-five years' imprisonment. The sentence totaling ten years' imprisonment is well within the 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 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 Mark S. Rosen is relieved of further representation of Taylor 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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*Sheila T. Reiff*
*Clerk of Court of Appeals*