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September 11, 2018

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Alonte D. Wren
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You are hereby notified that the Court has entered the following opinion and order:

2016AP2307-CRNM State of Wisconsin v. Alonte D. Wren (L.C. # 2015CF001730)

Before Kessler, P.J., Brash 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).

Alonte D. Wren appeals from a judgment convicting her of operating a vehicle without the owner's consent and of attempted theft as a party to the crime. *See* WIS. STAT. §§ 943.23(2),

943.20(1)(a), 939.32, 939.05 (2015-16).[1] Appointed appellate counsel, J. Dennis Thornton, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738, 744 (1967), and WIS. STAT. RULE 809.32. Wren was advised of her right to file a response, but she has not done so. 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.

Wren was charged with committing the following crimes: robbery with use of force as a party to a crime; unauthorized use of personal identifying information or documents to obtain a thing of value as a party to a crime; and operating a vehicle without the owner's consent. The charges stemmed from an incident that occurred in February 2015 in a parking lot.

According to the complaint, which served as the factual basis for Wren's pleas, police were dispatched to a retail establishment following a reported robbery and car theft. The victim told police that when she left the store, she had a small wallet in one hand and her car keys in the other. As she was unlocking her car, the victim was approached by a woman who asked to use the victim's cell phone. The victim said that she did not have a cell phone, and when she turned back to her car, another person was standing next to her. The first person then pushed the victim to the ground while the second person got into the driver's seat of the car. The victim reported that one person grabbed her purse and keys.

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

As the driver's door was being pulled shut, the victim reached up and grabbed the handle to pull it open. The driver took off, causing the victim to lunge with the vehicle and fall to the ground again. The driver sped off.

The victim's vehicle was later located, and as police officers observed it, they saw two students from a nearby high school get into it. The officers identified Wren as the person in the driver's seat holding the keys. When questioned, Wren said that she bought the car from a co-worker. The police investigated and Wren's story turned out to be false.

Police also learned that one of the victim's credit cards was used without her consent at a Boost Mobile store. The owner of the store subsequently confirmed that a cell phone in Wren's possession when she was arrested had been purchased at the store. According to the complaint, the victim's credit card either was used or was attempted to be used at other locations as well.

As detailed in the complaint, Wren's co-defendant admitted that the two stole the victim's car and used the victim's credit card.

Wren ultimately pled guilty to operating a vehicle without the owner's consent and to attempted theft as a party to the crime. The circuit court accepted her pleas and imposed the following sentences: two years of initial confinement and two years of extended supervision for operating a vehicle without the owner's consent and a concurrent term of two years of initial confinement and two years of extended supervision for attempted theft. The circuit court then stayed those sentences and ordered Wren to serve two years of probation with 120 days in jail as a condition.

In the no-merit report presently before us, appellate counsel addresses whether there would be any arguable merit to an appeal on a variety of issues. We agree with appellate counsel's conclusion that there would be no arguable merit to pursuing the issues identified by counsel on appeal. For purposes of this opinion, this court will address only the following issues: the validity of Wren's pleas and the circuit court's exercise of sentencing discretion.

Guilty Pleas

Appellate counsel addresses whether Wren has an arguably meritorious basis for challenging her pleas on appeal. At the plea hearing, Wren pled guilty to operating a vehicle without the owner's consent and to attempted theft as a party to the crime. In exchange, the State agreed to request that the circuit court impose and stay a prison sentence and order Wren to serve probation. The State further agreed that it would not make any recommendation as to the length of the prison sentence, but would ask that the circuit court order Wren to serve condition time in an amount left to the circuit court's discretion. The State also told the circuit court that it would remain silent on the issue of expungement.

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). Wren completed a plea questionnaire and waiver of rights form and an addendum, *see* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). The relevant jury instructions were attached to the form.[2]

[2] The jury instruction on party-to-a-crime liability was not attached. However, in explaining the charge of attempted theft from a person as party to a crime, the circuit court pointed out that Wren was charged with acting with her co-defendant to attempt to take and carry away moveable property belonging to the victim without the victim's consent and with intent to deprive her permanently of the possession of such property. The circuit court also confirmed with Wren's attorney that he went over the concept of party-to-a-crime liability with her.

The form listed, and the court explained, the maximum penalties Wren faced. The maximum penalties were properly stated for the two crimes to which Wren entered pleas, except as to the fine for the attempted theft charge. The form provided that the maximum fine was $5000 when it was $12,500. The fine was, however, accurately referenced in the complaint, which Wren acknowledged having read with her attorney. Additionally, the circuit court properly detailed the potential for a $12,500 fine during the colloquy when it explained the range of punishments Wren faced. In any event, the circuit court did not ultimately impose a fine against Wren.

The form, along with addendums, further specified the constitutional rights that Wren was waiving with her pleas. *See* ***Bangert***, 131 Wis. 2d at 270-72. The circuit court also 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. Therefore, there would be no arguable merit to challenging the validity of Wren's guilty pleas.[3]

Sentencing

Appellate counsel also discusses 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

[3] Two mandatory DNA surcharges were assessed in the judgment of conviction. Because of the multiple DNA surcharges, we previously put these appeals on hold pending the Wisconsin Supreme Court's decision in ***State v. Odom***, No. 2015AP2525-CR, which was expected to address whether a defendant could withdraw a plea because the defendant was not advised at the time of his or her plea that multiple mandatory DNA surcharges would be assessed. The ***Odom*** appeal was voluntarily dismissed before oral argument. These cases were then held for a decision in ***State v. Freiboth***, 2018 WI App 46, __ Wis. 2d __, __ N.W.2d __. ***Freiboth*** holds that a plea hearing court does not have a duty to inform the defendant about the mandatory DNA surcharge because the surcharge is not punishment and is not a direct consequence of the plea. ***Id.***, ¶12. Consequently, there would be no arguable merit to a claim for plea withdrawal based on the assessment of mandatory DNA surcharges.

197, or that the sentences were 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 other 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.

When sentencing Wren, the circuit court highlighted the serious nature of the crimes: "The two of you go up to this woman, somehow she ends up on the ground, somehow she ends up hurt. This is an older woman who has an oxygen tank to help her breathe." The circuit court reflected on the fact that Wren lied to police about how she came to possess the car and on the effects of the crimes on the victim. The circuit court went on to express confusion as to why Wren, who had no prior record and who was a high school graduate, would do something like this.

For the two crimes to which she pled guilty, Wren faced eleven years of imprisonment. *See* WIS. STAT. §§ 943.23(2), 943.20(1)(a), 939.32, 939.05, 939.50(3)(g) & (h). The circuit court imposed and stayed prison sentences and ordered Wren to serve two years of probation with 120 days in jail as a condition. Our review of the sentencing transcript leads us to conclude that there

would be no merit to challenge the circuit court's compliance with ***Gallion***. Further, there would be no merit to assert that the sentences were excessive. *See* ***Ocanas***, 70 Wis. 2d at 185.

We have also considered whether Wren could pursue an arguably meritorious challenge to the circuit court's decision at sentencing not to order expungement of her convictions upon her completion of the sentences. When the circuit court sentences a person who is younger than twenty-five years old for crimes such as those at issue here, the circuit court may also order expungement of the convictions upon completion of the sentence if the circuit court concludes both that the person will benefit and that society will not be harmed. *See* WIS. STAT. § 973.015(1m)(a). Whether to order expungement under § 973.015 rests in the circuit court's discretion. ***State v. Matasek***, 2014 WI 27, ¶2, 353 Wis. 2d 601, 846 N.W.2d 811.

Here, the circuit court explained that expungement was not appropriate because "[t]his was a violent crime…. [Wren] got a very big break when the State reduced [the charge] from the robbery that it was to an attempted theft. She also got a very big break in that I didn't send her to prison right now, which I could have done." The circuit court additionally noted that it was not going to order expungement because "I see the remorse now, but a little late." The circuit court did not expressly reference the two factors to be considered—whether Wren would benefit and whether society would be harmed by expungement. However, the circuit court's remarks reveal that it implicitly concluded that the harm to society outweighed the benefit to Wren. *See* ***State v. Helmbrecht***, 2017 WI App 5, ¶14, 373 Wis. 2d 203, 891 N.W.2d 412. Specifically, the circuit court's remarks reflect its determination that expungement of Wren's record would undermine the primary sentencing purpose of punishment. A challenge to the circuit court's exercise of discretion would lack arguable merit.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to represent Wren further in this appeal.

Upon the foregoing, therefore,

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

IT IS FURTHER ORDERED that Attorney Thornton is relieved of further representation of Wren 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