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September 17, 2018

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

2018AP445-CRNM State of Wisconsin v. Corey A. Campbell (L.C. # 2016CF2583)

Before Kessler, P.J., Brennan 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).

Corey A. Campbell appeals from a judgment of conviction, entered upon his guilty plea, on one count of first-degree recklessly endangering safety with a dangerous weapon as a party to a crime. Appellate counsel, Michael S. Holzman, 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] Campbell 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.

Campbell was charged in connection with a shooting incident involving three vehicles—a white sedan, a black sedan, and a blue SUV—on Interstate 43, much of which was captured on state traffic cameras. Around 10 a.m. on December 19, 2015, the white sedan entered the interstate at a high rate of speed, pursued by the black and blue vehicles. The black sedan changed lanes multiple times in pursuit of the white sedan. A witness from another vehicle saw someone shooting from the SUV at least three times. J.W., a citizen not involved with the three vehicles, was hit in the thigh by one of the bullets while driving. The black sedan eventually crashed into the cement barrier wall, crossing all lanes of traffic to end up in the right lane. It drove to the SUV, which by that point was pulled off the roadway. The two SUV occupants—one of whom would later be identified as Campbell—got in the black sedan, which then exited the interstate by way of an on-ramp.

The black sedan ignored a red light, nearly striking an unmarked police car, which began to follow the black sedan. The police car's lights were activated. The black sedan ran another red light and spun out. The four occupants fled, two eastbound and two westbound.

Police recovered and processed the SUV. DNA from the steering wheel contained profiles for at least two individuals, one of whom was a major male contributor. That profile,

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

from which at least ten genetic markers were discerned, was determined to be consistent with Campbell "with the probability of randomly selecting an unrelated individual as rarer than 1 in 11 billion." Campbell's DNA was matched to hair from a comb recovered in the SUV. Officers who traced the flight path of the eastbound suspects recovered a black sweatshirt, a blue sweatshirt, and a red t-shirt; the major DNA profile on the black sweatshirt matched Campbell.

The State charged Campbell with one count of first-degree recklessly endangering safety with a dangerous weapon as a party to a crime. Campbell agreed to enter a guilty plea, in exchange for which the State would recommend prison, but with no specific length recommended for the sentence. Campbell was sentenced to ten years' initial confinement and five years' extended supervision, consecutive to a revocation sentence. Campbell appeals.

The first potential issue appellate counsel discusses is whether Campbell should be allowed to withdraw his plea as not knowing, intelligent, and voluntary. Our review of the record—including the plea questionnaire and waiver of rights form and addendum; attached jury instructions for first-degree recklessly endangering safety, party to a crime liability, and the dangerous weapon enhancer, all signed by Campbell; and the plea hearing transcript—confirms that the circuit court complied with its obligations for taking a guilty plea, pursuant to WIS. STAT. § 971.08, ***State v. Bangert***, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. Additionally, the no-merit report properly analyzes this issue. There is no arguable merit to a claim that the circuit court failed to properly conduct a plea colloquy or that Campbell's plea was anything other than knowing, intelligent, and voluntary.

The next issue appellate counsel discusses is whether there is any challenge to be made to the circuit court's exercise of its 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 additional 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.***

The no-merit report properly analyzes this issue as well, and our review of the record confirms that the circuit court appropriately considered relevant sentencing objectives and factors. The fifteen-year sentence imposed is within the seventeen-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, based on all the factors the circuit court considered, 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 court's sentencing discretion.

Appellate counsel also addresses two issues Campbell raised with him. The first of these issues is that Campbell said he felt "coerced" into the plea. Appellate counsel writes that Campbell "contends that he was coerced by the prosecutor because his attorney informed him that the State would add additional charges if the matter went to trial. He felt that his trial counsel was ineffective and coercive in informing him of this coercive offer from the State."

The no-merit report properly analyzes this issue and appropriately concludes that there is no meritorious claim based upon it. "While confronting a defendant with the risk of more severe punishment clearly may have a 'discouraging effect on the defendant's assertion of his trial rights, the imposition of these difficult choices [is] an inevitable'—and permissible—'attribute of any legitimate system which tolerates and encourages the negotiation of pleas.'" ***Bordenkircher v. Hayes***, 434 U.S. 357, 364 (1978) (citation omitted; brackets in ***Bordenkircher***). "[O]penly present[ing] the defendant with the unpleasant alternatives of forgoing trial or facing charges on which he was plainly subject to prosecution … [does] not violate" due process. ***Id.*** at 365; *see also* ***State v. Cameron***, 2012 WI App 93, ¶17, 344 Wis. 2d 101, 820 N.W.2d 433; ***State v. Williams***, 2004 WI App 56, ¶48, 270 Wis. 2d 761, 677 N.W.2d 691. In other words, the State is, in fact, permitted to threaten additional charges without it necessarily rising to the level of coercion. It is further not coercive of defense counsel to relay the State's threat as part of the plea discussions, as defense counsel is obligated to communicate formal offers from the State. *See* ***Missouri v. Frye***, 566 U.S. 134, 145 (2012).

Campbell's other issue is that he felt the circuit court's sentencing comments reflect bias and coerced him into accepting a guilty plea. According to the no-merit report, the circuit court at sentencing "stated that if [Campbell] had taken the matter to trial he would have likely faced a longer sentence because it would have reflected badly on his character, and the [S]tate may have filed new charges increasing [Campbell's] prison exposure."

First, the claim that the circuit court's sentencing remarks coerced a plea that had been entered three months before sentencing is absurd on its face.

Second, there is a rebuttable presumption that a judge acted fairly and impartially in discharging his or her duties. *See* ***State v. Gudgeon***, 2006 WI App 143, ¶20, 295 Wis. 2d 189, 720 N.W.2d 114. We are unable to locate any part of the transcript, including the portion referenced in appellate counsel's record citation, wherein the circuit court expressly conveyed the message that "if [Campbell] had taken the matter to trial he would have likely faced a longer sentence because it would have reflected badly on his character." Rather, the circuit court observed that Campbell:

> entered a guilty plea and that's valuable. There is value in standing up and saying, I committed this crime. That displays correspondingly better character than someone who takes the matter to trial and is found guilty, that is. So that does display good character. Just [so] you and I are on the same page, you're getting a lower sentence today because you accepted responsibility on this case than you would have gotten had you gone to trial.

It is true that a sentencing court cannot punish a defendant for exercising the right to a trial. *See* ***Hanneman v. State***, 50 Wis. 2d 689, 691, 184 N.W.2d 896 (1971). However, the entry of a guilty plea may constitute a mitigating factor at sentencing, *see* ***Jung v. State***, 32 Wis. 2d 541, 550, 145 N.W.2d 684 (1966), the weight of which is within the sentencing court's discretion, *see* ***Odom***, 294 Wis. 2d 844, ¶7. It is evident from the circuit court's comments that it treated Campbell's plea as a mitigating factor in his favor. There is no arguable merit to a claim that the circuit court's sentencing comments reflect bias or overcome the presumption of fairness and impartiality.

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 Michael S. Holzman is relieved of further representation of Campbell 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