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DISTRICT I

September 21, 2018

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

2017AP9-CRNM State of Wisconsin v. Jonte L. Evans (L.C. # 2016CF757)

Before Kessler, P.J., Brennan 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).

Jonte L. Evans appeals from a judgment of conviction, entered upon his guilty pleas, on one count of third-degree sexual assault and one count of strangulation or suffocation. Appellate counsel, Becky Nicole Van Dam, 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] Evans 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.

According to the criminal complaint, L.B.D., who admits to being a prostitute, went to a house on February 14, 2016. Her pimp and six or seven other people, including Evans, were there. L.B.D. did not know Evans, but identified him later in a photo array. L.B.D. left the house but returned later, intoxicated. She stumbled and fell on Evans, who became upset and started punching her in the face. When L.B.D. said she was going to call the police, Evans began dragging her by her hair. The pimp told them to take it outside. Evans dragged L.B.D. to an alley next to an apartment building; L.B.D. reported he had a gun. Evans began to strangle L.B.D., impeding her breathing, then made her face away from him and put her hands on the building. Evans pulled down her pants and forced penis-to-vagina intercourse. When Evans was finished, he ran away. L.B.D. called 911.

Evans was charged with one count of second-degree sexual assault, one count of strangulation or suffocation, and one count of misdemeanor battery. He agreed to resolve his case with a plea bargain. In exchange for his guilty pleas to a sexual assault and the strangulation charge, the State agreed to amend the sexual assault charge down to third-degree and to dismiss and read in the battery charge. The circuit court accepted Evans' guilty pleas and imposed four years' initial confinement and four years' extended supervision for the sexual

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

assault, plus a consecutive two years' initial confinement and two years' extended supervision for the strangulation. Evans appeals.

Counsel identifies two potential issues: whether there is any basis for a challenge to the validity of Evans' guilty pleas and whether the circuit court appropriately exercised its sentencing discretion. We agree with counsel's conclusion that these issues lack arguable merit.

There is no arguable basis for challenging Evans' pleas as not knowing, intelligent, and voluntary. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Evans completed a plea questionnaire and waiver of rights form, *see* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987), in which he acknowledged that his attorney had explained the elements of the offenses. The jury instructions for both offenses were attached. The form correctly acknowledged the maximum penalties Evans faced and the form, along with an addendum, also specified the constitutional rights he was waiving with his pleas. *See* ***Bangert***, 131 Wis. 2d at 262, 271.

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. Our review of the record confirms that the circuit court complied with its obligations for taking a guilty plea. *See* ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. There is

no arguable merit to a claim that the circuit court failed to fulfill its obligations or that Evans' pleas were anything other than knowing, intelligent, and voluntary.[2]

The other issue counsel raises is whether the circuit court erroneously exercised 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 primary factors including the gravity of the offense, the character of the offender, and the protection of the public, and may consider several 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* ***Ziegler***, 289 Wis. 2d 594, ¶23.

The circuit court identified appropriate sentencing objectives and explained why probation was not appropriate. It identified several mitigating factors that it considered. The circuit court did not expressly state why it was making the sentences consecutive. *See* ***id.***, ¶31

[2] Two mandatory DNA surcharges were assessed on the judgment of conviction. Because of the multiple DNA surcharges, we put this appeal 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 he was not advised at the time of the plea that multiple mandatory DNA surcharges would be imposed. ***Odom*** was voluntarily dismissed before oral argument. This case was then held for a decision in ***State v. Freiboth***, 2018 WI App 46, __ Wis. 2d __, __ N.W.2d __. ***Freiboth*** holds that a circuit court does not have a duty during a plea colloquy to inform a defendant about mandatory DNA surcharges because the surcharge is not a punishment or a direct consequence of the plea. *See* ***id.***, ¶12. Thus, there is no arguable merit to a claim for plea withdrawal based on the assessment of mandatory DNA surcharges.

("[A] consecutive sentence must be supported by 'a statement of reasons for the selection of consecutive terms.'") (citation omitted). However, this court may search the record for reasons to support a discretionary decision. *See* ***State v. Pharr***, 115 Wis. 2d 334, 347, 340 N.W.2d 498 (1983). Here, it is evident that the circuit court considered the distinct danger of strangulation, the level of violence associated with both offenses, and Evans' apparent motivation—power, not sex—as reasons for imposing consecutive sentences.

The maximum possible sentence Evans could have received was sixteen years' imprisonment. The sentence totaling twelve 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 sentencing court's discretion.[3]

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.

[3] Counsel notes that the circuit court also required Evans to register as a sex offender for the mandatory minimum period of fifteen years. Counsel concludes there is no arguable merit to challenging the registration requirement as part of the sentencing because the registration "is required by statute[.]" We additionally observe that the mandatory registration requirement would not be a basis for plea withdrawal because such registration is a collateral consequence of the plea and does not constitute punishment. *See* ***State v. Bollig***, 2000 WI 6, ¶27, 232 Wis. 2d 561, 605 N.W.2d 199.

IT IS FURTHER ORDERED that Attorney Becky Nicole Van Dam is relieved of further representation of Evans 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