



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

October 15, 2018

To:

Hon. William S. Pocan
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St., Rm. 401
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Thomas J. Erickson
Thomas J. Erickson Law Office
316 N. Milwaukee St., Ste. 550
Milwaukee, WI 53202

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Dangelo O. Key 643330
Wisconsin Secure Program Facility
P.O. Box 9900
Boscobel, WI 53805-9900

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

2017AP804-CRNM State of Wisconsin v. Dangelo O. Key (L.C. # 2016CF171)

Before Brennan, 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).

Dangelo O. Key appeals a judgment entered after he pled guilty to two counts of burglary to a building or dwelling, one of which was charged as party to a crime. *See* WIS. STAT. §§ 943.10(1m)(a), 939.05 (2015-16).¹ His appellate counsel, Thomas J. Erickson, has filed a no-

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

merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Key received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

The complaint, which served as the factual basis for Key's subsequent guilty pleas, stated that on two occasions in January 2016 Key broke into homes. During the first burglary, the victim returned to his apartment and found Key holding his television. The victim reported that when he confronted Key, Key took out a handgun and pointed it at him. Key ordered the victim to a back room in the apartment and then fled without the television. Police later determined that Key's fingerprints were on the television. After reviewing a photo array, the victim positively identified Key as the man with the gun in his apartment.

As to the second burglary count, according to the complaint, police officers were dispatched to a home to investigate a break-in. The victim reported that when she arrived home, she noticed the side door was open. The victim was afraid to go in but could see from outside that cabinets were open and someone had been inside. When she went inside with the police, the victim saw that various items were missing. Once again, fingerprint evidence connected Key to the scene.²

Pursuant to plea negotiations, Key pled guilty to the two counts of burglary in this case. In exchange, the State moved to dismiss and read in misdemeanor charges of disorderly conduct

² Fingerprint evidence also connected Key's co-actor to the scene for this charge.

and two counts of theft (value not exceeding \$2500) against Key in two pending cases. The State additionally agreed that it would recommend a prison sentence without specifying the length of the sentence.

The circuit court accepted Key's pleas and sentenced him to three years of initial confinement and two years of extended supervision on the first count of burglary, along with two years of initial confinement and two years of extended supervision on the second count of burglary as a party to a crime, with the latter sentence to run consecutively. Additionally, the circuit court made Key eligible for the challenge incarceration program and the substance abuse program, after he served at least four years of initial confinement time.

The no-merit report addresses the potential issues of whether Key's pleas were freely, voluntarily, and knowingly entered, and whether the sentence was the result of an erroneous exercise of discretion. For reasons explained below, we agree with the conclusion that there would be no arguable merit to pursuing these issues on appeal.

Guilty Pleas

Counsel first addresses whether Key has an arguably meritorious basis for challenging his pleas on appeal. 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). Key completed a plea questionnaire and waiver of rights form, *see State v. Moerderdorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). The applicable jury instructions were attached to the form. The form listed, and the court explained, the maximum penalties Key faced. The form, along with an addendum, further specified the constitutional rights that Key was waiving with his pleas. *See Bangert*, 131 Wis. 2d at 270-72.

The circuit court 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. There would be no arguable merit to a challenge to the validity of the pleas and the record discloses no other basis to seek plea withdrawal.

Sentencing

The next issue the no-merit report discusses is 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 197, or that the sentence was 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. *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.

In this case, the circuit court applied the standard sentencing factors and explained their application in accordance with the framework set forth in *Gallion* and its progeny. Before concluding that probation would unduly depreciate the nature of the offenses, the circuit court

highlighted Key's "incredibly problematic" and extensive juvenile court record. When that criminal history was considered in the context of the underlying felonies in this case and the misdemeanor charges that were dismissed and read in, the circuit court concluded that "not much learning has taken place over a long period of time, and that's especially problematic."

The circuit court accounted for the fact that Key was only twenty years old and that the charges were his first offenses as an adult but emphasized the need to protect the public. In doing so, the circuit court explained that residential burglaries like the ones Key committed are aggravated crimes because people should feel safe in their homes. Additionally, the circuit court noted that the burglary Key committed while using a gun heightened the gravity of the offense.

The circuit court ordered Key to serve consecutive sentences totaling five years of initial confinement and four years of extended supervision. However, the circuit court also made Key eligible for both the challenge incarceration program and the substance abuse program after serving at least four years of his initial confinement time. A circuit court has discretion to determine both a defendant's eligibility for these programs and when the defendant's eligibility may begin. *See State v. White*, 2004 WI App 237, ¶¶2, 6-10, 277 Wis. 2d 580, 690 N.W.2d 880; WIS. STAT. § 973.01(3g)-(3m).³ There would be no merit to assert that the circuit court erroneously exercised its discretion as to Key's eligibility for both prison treatment programs or that Key's sentences were excessive. *See Ocanas*, 70 Wis. 2d at 185.

³ The Wisconsin substance abuse program was formerly known as the earned release program. Effective August 3, 2011, the legislature renamed the program. *See* 2011 Wis. Act 38, § 19; WIS. STAT. § 991.11. The program is identified by both names in the current version of the Wisconsin Statutes. *See* WIS. STAT. §§ 302.05; 973.01(3g).

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Key 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 Erickson is relieved of further representation of Dangelo O. Key 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