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

2018AP233-CRNM State of Wisconsin v. Rodney Lee Stroik (L.C. # 2015CF4233)

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).

Rodney Lee Stroik appeals a judgment of conviction entered upon his guilty pleas to burglary of a building and attempted burglary of a building, both as a party to a crime. *See* WIS. STAT. §§ 943.10(1m)(a) (2015-16),[1] 939.32, 939.05. The circuit court imposed two consecutive,

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

evenly bifurcated three-year terms of imprisonment and ordered Stroik to pay restitution of $1107.18. In postconviction proceedings, the circuit court awarded Stroik the eighty-one days of sentence credit he requested.

Appellate counsel, Attorney Thomas J. Erickson, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Stroik did not file a response. Based upon our review of the no-merit report and the record, we conclude that no arguably meritorious issues exist for an appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, Stroik was one of three men who participated in two burglaries and one attempted burglary of residential garages on March 7, 2015, in Milwaukee, Wisconsin. A victim of each crime spoke to police and described either losses or property damage suffered as a result of the offense. Police interviewed Stroik, Samuel Pelkey, and Brent Martiny. Each man admitted that he committed all three crimes and identified the other two men as co-actors in the offenses. The State charged Stroik with two counts of burglary of a building and one count of attempted burglary of a building, all as a party to a crime.

On the day of trial, Stroik decided to resolve the charges with a plea bargain. Stroik pled guilty, as a party to a crime, to one count of burglary and one count of attempted burglary. The remaining charge was dismissed but ordered read in for sentencing purposes. The circuit court then adjourned the matter for sentencing.

Stroik next filed a *pro se* motion seeking to withdraw his guilty pleas and to suppress his custodial statement. At a subsequent hearing, Stroik expressed dissatisfaction with his trial counsel. The circuit court permitted trial counsel to withdraw, and successor counsel was

appointed to represent Stroik. Successor counsel thereafter filed a motion for plea withdrawal on Stroik's behalf. Stroik, however, failed to appear for the motion hearing. The circuit court therefore denied relief and issued a warrant for Stroik's arrest. After police took Stroik into custody, the circuit court conducted a hearing and invited Stroik to refile the motion for plea withdrawal. Trial counsel responded that, following consultation with Stroik, the defense instead requested a sentencing date. The matter proceeded to sentencing some weeks later.

We first consider whether Stroik could pursue an arguably meritorious challenge to his guilty pleas. We conclude he could not.

At the outset of the plea hearing, the State described the terms of the plea bargain. Stroik would plead guilty, as a party to a crime, to one count of burglary and one count of attempted burglary, and the State would move to dismiss and read in the remaining charge. The State also agreed that it would not make a sentencing recommendation. Stroik told the circuit court that he understood the terms of the plea bargain.

The circuit court explained to Stroik that upon conviction for burglary, he faced maximum penalties of twelve and one-half years of imprisonment and a $25,000 fine. *See* WIS. STAT. §§ 943.10(1m)(a), 939.50(3)(f). Stroik said he understood. The circuit court further explained that upon conviction for attempted burglary, he faced maximum penalties of six years and three months of imprisonment and a $12,500 fine. *See* WIS. STAT. § 939.32. Stroik again said he understood. The circuit court advised Stroik that it was not bound by the plea bargain or any sentencing recommendations and that the circuit court could impose consecutive sentences up to the maximums allowed by law. Stroik said he understood. He told the circuit court that he

had not been promised anything outside the terms of the plea bargain to induce his guilty pleas and that he had not been threatened.

The circuit court asked Stroik if he had taken any drugs or alcohol before the hearing, and Stroik disclosed that he was no longer taking medication for attention deficit disorder, bipolar disorder, and depression. The circuit court asked Stroik whether those conditions or the lack of medication for those conditions impeded his ability to understand the court proceedings. Stroik said "no," and added that he was "thinking clearly." The circuit court found that Stroik was not exhibiting any signs of a mental disorder in the court room.

The record contains a signed plea questionnaire and waiver of rights form with attachments. Stroik confirmed that he reviewed the form and attachments with his trial counsel and that he understood them. The plea questionnaire reflects that Stroik was thirty-six years old and had a high school education. The questionnaire further reflects his understanding of the charges he faced, the rights he waived by pleading guilty, and the penalties he faced upon conviction. A signed addendum to the plea questionnaire reflects Stroik's acknowledgment that by entering guilty pleas he would give up his right to raise defenses, to challenge the sufficiency of the complaint, and to seek suppression of his statement or other evidence against him.

The circuit court told Stroik that by pleading guilty he would give up the constitutional rights listed on the plea questionnaire, and the circuit court reviewed those rights on the record. Stroik said he understood his rights. The circuit court explained that if he was not a citizen, a

guilty plea exposed him to the risk of deportation, exclusion from admission to this country, or denial of naturalization. *See* WIS. STAT. § 971.08(1)(c). Stroik said he understood.[2]

"[A] circuit court must establish that a defendant understands every element of the charges to which he pleads." ***State v. Brown***, 2006 WI 100, ¶58, 293 Wis. 2d 594, 716 N.W.2d 906. The circuit court may establish the defendant's requisite understanding in a variety of ways: "summarize the elements of the offenses on the record, or ask defense counsel to summarize the elements of the offenses, or refer to a prior court proceeding at which the elements were reviewed, or refer to a document signed by the defendant that includes the elements." *See* ***id.***, ¶56. Here, at the time of the guilty pleas, Stroik filed signed copies of the jury instructions that describe the elements of burglary and of attempted burglary and that explain how a person may be convicted as a party to a crime. Stroik told the circuit court that he had reviewed the jury instructions with his trial counsel and that he understood them. The circuit court then reviewed the elements of the crimes and discussed party-to-a-crime liability on the record. Stroik said he understood the elements and the concept of acting as a party to a crime.

A plea colloquy must include an inquiry sufficient to satisfy the circuit court that the defendant committed the crimes charged. *See* WIS. STAT. § 971.08(1)(b). Here, trial counsel and the State agreed that the circuit court could rely on the facts stated in the criminal complaint. *See* ***State v. Black***, 2001 WI 31, ¶13, 242 Wis. 2d 126, 624 N.W.2d 363 (factual basis established

[2] The circuit court did not caution Stroik about the risks described in WIS. STAT. § 971.08(1)(c) using the precise words required by the statute, but minor deviations from the statutory language do not undermine the validity of a plea. *See* ***State v. Mursal***, 2013 WI App 125, ¶20, 351 Wis. 2d 180, 839 N.W.2d 173. Moreover, before a defendant may seek plea withdrawal based on failure to comply with § 971.08(1)(c), the defendant must show that "the plea is likely to result in the defendant's deportation, exclusion from admission to this country or denial of naturalization." *See* § 971.08(2). Nothing in the record suggests that Stroik could make such a showing.

when trial counsel stipulates on the record to the facts in the criminal complaint). The circuit court properly established a factual basis for Stroik's guilty pleas.

The record reflects that Stroik entered his guilty pleas knowingly, intelligently, and voluntarily. *See* WIS. STAT. § 971.08 and ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *see also* ***State v. Hoppe***, 2009 WI 41, ¶32, 317 Wis. 2d 161, 765 N.W.2d 794 (completed plea questionnaire and waiver of rights form helps to ensure a knowing, intelligent, and voluntary plea). The record does not reflect a basis for an arguably meritorious challenge to the validity of the pleas.

We next consider whether Stroik could pursue an arguably meritorious challenge to his sentences. Sentencing lies within the circuit court's discretion, and our review is limited to determining if the circuit court erroneously exercised its discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "When the exercise of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of the [circuit] court in passing sentence." ***State v. Stenzel***, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 688 N.W.2d 20.

The circuit court must "specify the objectives of the sentence on the record. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." ***Gallion***, 270 Wis. 2d 535, ¶40. In seeking to fulfill the sentencing objectives, the circuit court must consider the primary sentencing factors of "the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court may also consider a wide range of other factors concerning the defendant, the

offense, and the community. *See* ***id.*** The circuit court has discretion to determine both the factors that it believes are relevant in imposing sentence and the weight to assign to each relevant factor. *See* ***Stenzel***, 276 Wis. 2d 224, ¶16.

We agree with appellate counsel's conclusion that the record here reflects an appropriate exercise of sentencing discretion. The circuit court identified deterrence, rehabilitation, and accountability as the primary sentencing objectives, and the circuit court discussed the factors it viewed as relevant to achieving those goals. In considering the gravity of the offenses, the circuit court recognized that they did not involve weapons or violence. The circuit court found, however, that the loss of and damage to property that the victims suffered caused them substantial cost and distress. The circuit court discussed Stroik's character, commending Stroik for earning a high school equivalency degree and for participating in job training while incarcerated. The circuit court also acknowledged that his criminal activity appeared fueled by drug addiction, but the circuit court found that he had failed to capitalize on opportunities to treat his substance abuse during past periods of probation and incarceration. Further, the circuit court noted with concern that Stroik had accumulated nine prior criminal convictions. *See* ***State v. Fisher***, 2005 WI App 175, ¶26, 285 Wis. 2d 433, 702 N.W.2d 56 (substantial criminal record is evidence of character). The circuit court discussed the need to protect the public, emphasizing that residential burglaries undermine the safety and security of the community at large.

The circuit court considered Stroik's recommendation for a probationary disposition. *Cf.* ***Gallion***, 270 Wis. 2d 535, ¶25 (circuit court should consider probation as the first sentencing alternative). The circuit court determined that community supervision was "not an answer" in light of Stroik's on-going criminal activity over a period of many years. The court therefore

rejected Stroik's sentencing recommendation and instead imposed two consecutive, evenly bifurcated three-year terms of imprisonment.

The circuit court identified the factors that it considered in choosing sentences in this matter. The factors are proper and relevant. Moreover, the sentences are not unduly harsh. A sentence is unduly harsh "only where the sentence is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." *See* ***State v. Grindemann***, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (citation omitted). Here, the penalties imposed are far less than the law allows. "[A] sentence well within the limits of the maximum sentence is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances." ***Id.*** (citation omitted). Accordingly, Stroik's sentences are not unduly harsh or excessive. We conclude that a challenge to the circuit court's exercise of sentencing discretion would lack arguable merit.

We next consider whether Stroik could mount an arguably meritorious claim that the circuit court erred by denying his request to be found eligible for the challenge incarceration program and the Wisconsin substance abuse program. Both prison programs offer substance abuse treatment, and an inmate who successfully completes either program may convert his or her remaining initial confinement time to extended supervision time. *See* WIS. STAT. §§ 302.045(1), 302.045(3m)(b), 302.05(1)(am), 302.05(3)(c)2. A circuit court has discretion to determine a defendant's eligibility for these programs, and we will sustain the circuit court's decisions if they are supported by the record and the overall sentencing rationale. *See* ***State v.***

Owens, 2006 WI App 75, ¶¶7-9, 291 Wis. 2d 229, 713 N.W.2d 187; WIS. STAT. § 973.01(3g)-(3m).[3]

In this case, the circuit court emphasized its concern that Stroik failed to benefit from past "interventions" and explained that his current crimes and criminal history required "accountability at this point." The circuit court therefore denied Stroik eligibility for programs that would shorten his time in initial confinement. The circuit court's decision reflects a reasonable exercise of discretion, and a challenge to that decision would therefore lack arguable merit.

Finally, we consider whether Stroik could mount an arguably meritorious challenge to the order that he pay $1107.18 in restitution. Stroik stipulated to restitution in that amount at sentencing. *See* WIS. STAT. § 973.20(13)(c). Therefore, a challenge to the order would lack arguable merit. *See* ***State v. Leighton***, 2000 WI App 156, ¶56, 237 Wis. 2d 709, 616 N.W.2d 126.

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

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

[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).

IT IS FURTHER ORDERED that appellate counsel, Attorney Thomas J. Erickson, is relieved of any further representation of Rodney Lee Stroik on appeal. *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