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

2018AP1766-CRNM State of Wisconsin v. Terrecho Donte Shurn, Jr.
(L.C. # 2016CF1725)

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).

Terrecho Donte Shurn, Jr., appeals from a judgment of conviction, entered upon his guilty plea, on one count of possession of a firearm by an adjudicated delinquent. Appellate counsel, Gregory Bates, 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] Shurn 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 appellate counsel's report, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

On January 23, 2016, an Oak Creek police officer conducted a routine traffic stop. When approaching the vehicle, the officer detected a strong odor of marijuana. The driver and front seat passenger appeared nervous, and the officer could see a green leafy substance scattered in the vehicle's center console. The officer summoned backup. When the backup arrived, officers removed the individuals from the vehicle and searched the interior. A .45-caliber semi-automatic handgun with a bullet in the chamber was found in the passenger-side glove box, along with a separate twenty-seven-round capacity magazine containing fourteen rounds. DNA recovered from the gun's handle identified Shurn, the front seat passenger, as the major contributor to the sample.

Shurn was charged with one count of possession of a firearm by a person previously adjudicated delinquent for committing a felony act[2] and one count of felony bail jumping. Shurn ultimately agreed to resolve this case with a plea agreement. In exchange for his guilty plea to the possession count, the State would recommend prison without specifying an amount. The

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

[2] A person who possesses a firearm is guilty of a Class G felony if "[t]he person has been adjudicated delinquent for an act committed on or after April 21, 1994, that if committed by an adult in this state would be a felony." WIS. STAT. § 941.29(1m)(bm).

circuit court accepted Shurn's guilty plea and imposed the maximum sentence of five years' initial confinement and five years' extended supervision. Shurn appeals.

Appellate counsel discusses three potential issues in the no-merit report: whether the circuit court complied with the requirements for accepting a guilty plea, whether there are any preserved pretrial issues, and whether the circuit court provided a "reasonable basis" for the sentence imposed. We agree with appellate counsel's ultimate conclusion that these issues lack arguable merit.

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). To that end, a number of requirements have been established for circuit courts accepting guilty pleas as a way to help ensure such pleas are properly entered by the defendant. *See, e.g.*, ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906 (listing circuit court duties); WIS. STAT. § 971.08. We agree with appellate counsel that, in general, the circuit court appropriately complied with these requirements.[3]

We note, however, that when the circuit court reviewed "the nature of the crime" with which Shurn was charged, it referred to "felon in possession" even though that was not the specific offense with which Shurn was charged. *Cf.* WIS. STAT. § 941.29(1m)(a) (felon in possession) *with* § 941.29(1m)(bm) (adjudicated delinquent in possession). This reference may have occurred because the plea questionnaire and attached jury instructions both referred to a

[3] We further note that Shurn 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 indicated that his attorney had explained the elements of the offenses. The form correctly acknowledged the maximum penalties Shurn faced and the form, along with an addendum, also specified the constitutional rights he was waiving with his plea. *See* ***State v. Bangert***, 131 Wis. 2d 246, 262, 271, 389 N.W.2d 12 (1986).

"felon in possession" rather than an adjudicated delinquent. Despite this, we conclude that there is no arguable challenge to be made to Shurn's plea.

First, there is no separate instruction for an adjudicated delinquent in possession of a firearm; WIS JI—CRIMINAL 1343 suggests it can be used for most violations of WIS. STAT. § 941.29(1m).[4] While it perhaps would have been clearer to modify one of the instruction's elements—that the defendant had previously been convicted of a felony—to more accurately reflect Shurn's prior delinquency adjudication on a felony, the two situations are functionally equivalent. Second, the first page of the criminal complaint was attached to the jury instructions, and the complaint clearly identifies Shurn's prior juvenile adjudication as the predicate for the current charge. The complaint itself has the delinquency dispositional order attached. Finally, at the plea hearing, defense counsel noted for the court that "the adjudicated basis is in the criminal complaint. We admit to that."

Thus, the record as a whole demonstrates that Shurn's guilty plea was knowing, intelligent, and voluntary. *See* ***State v. Cross***, 2010 WI 70, ¶32, 326 Wis. 2d 492, 786 N.W.2d

[4] We observe that footnote 1 to WIS JI—CRIMINAL 1343 states, in relevant part:

> The instruction is drafted for cases involving possession of a firearm by a person convicted of a felony. However, the statute also applies to other categories of individuals. See § 941.29(1m)(a) through (g). This instruction is suitable for use in cases involving subs. (1m)(a) and (b)…. For cases involving subs. (1m)(c) through (em), the instruction must be modified…. For cases involving subs. (1m)(f) and (g), see Wis JI Criminal 1344.

Despite the fact that WIS. STAT. § 941.29(1m)(bm) was created in 1994, *see* 1993 Wis. Act 195, § 8, there is no specific mention of how to use the instruction for a case involving sub. (1m)(bm), the adjudicated delinquent subsection: paragraph (bm) falls *between* paras. (b) and (c), so it is not covered by any of the ranges specified in the footnote.

64 (***Bangert*** is a framework for a valid plea; an evidentiary hearing is not needed "for every small deviation" from plea hearing duties.). There is no arguable merit to challenging the plea.

The second issue appellate counsel discusses in the no-merit report is whether there are any preserved pretrial issues. Appellate counsel correctly notes that a valid guilty plea waives all nonjurisdictional defects and defenses except decisions on suppression motions. *See* ***State v. Popp***, 2014 WI App 100, ¶13, 357 Wis. 2d 696, 855 N.W.2d 471. No suppression motions were filed, and we agree with appellate counsel that the record before this court does not suggest any viable pretrial motions that could or should have been filed.

The final issue appellate counsel discusses is whether the circuit court provided a "reasonable basis" for its sentence. Sentencing is committed to the circuit court's discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. At sentencing, a 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 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.

We agree with appellate counsel's conclusion that the circuit court properly exercised its discretion in this case. The circuit court noted that all of Shurn's questionable and criminal

activities involved guns in some fashion. The circuit court therefore believed that the need to protect the public "at this point is very, very high." The circuit court also believed that the need for deterrence was "very, very high," explaining that it did not know what might work as a deterrent, as neither arrests nor pending cases seemed to successfully serve that function.

Shurn's ten-year sentence does not exceed the maximum allowed by law. *See* WIS. STAT. §§ 941.29(1m), 939.50(3)(g). Additionally, Shurn faced a mandatory minimum of three years' initial confinement.[5] *See* WIS. STAT. § 941.29(4m)(a). In light of the sentencing factors articulated by the circuit court, all of which were proper considerations, the sentence imposed would not shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Accordingly, there would be no arguable merit to a challenge to the circuit court's sentencing discretion.

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.

[5] At sentencing, the State informed the circuit court of the mandatory minimum three-year sentence. We have therefore considered whether there is any arguably meritorious claim that the State breached the plea agreement because the State had agreed not to recommend any particular length of time for a sentence. However, there is no arguable merit to such a claim in this case: the mandatory minimum sentence prescribed by law is fully relevant to the imposition of sentence, and a "'plea agreement which does not allow the sentencing court to be appraised of relevant information is void [as] against public policy.'" *See* ***State v. Liukonen***, 2004 WI App 157, ¶10, 276 Wis. 2d 64, 686 N.W.2d 689 (brackets in ***Liukonen***) (citations omitted). We further observe that the record demonstrates Shurn was aware of the mandatory minimum sentence: among other things, it was disclosed on the plea questionnaire.

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of further representation of Shurn 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