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DISTRICT I

Amended January 17, 2019 as to release date
January 11, 2019

To:

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

2018AP1450-CRNM State of Wisconsin v. Harold G. Morgan (L.C. # 2016CF4907)

Before Kessler, P.J., 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).

Harold G. Morgan appeals from a judgment, entered upon his guilty plea, convicting him on one count of possession with intent to deliver more than fifty grams of heroin, contrary to WIS. STAT. § 961.41(1m)(d)4. (2015-16).[1] Appellate counsel, Thomas J. Erickson, has filed a

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

no-merit report, pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Morgan 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 are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

According to the criminal complaint, police executed a search warrant at Morgan's Milwaukee apartment, from which they recovered more than seventy grams of suspected heroin; two firearms, including one similar to an AK-47; multiple boxes and magazines of ammunition; methadone, morphine, and oxycodone pills; cutting agents; and other drug paraphernalia including a drug press and packaging materials. Morgan was charged with one count of possession with intent to deliver more than fifty grams of heroin with the use of a dangerous weapon. At the initial appearance, the State noted it was "sitting on" seven controlled buys[2] for which it would issue charges if this matter failed to resolve.

Morgan agreed to enter a guilty plea to possession with intent to deliver more than fifty grams of heroin. In exchange, the State agreed to dismiss and read in the dangerous weapon enhancer, and it would ask for twenty to twenty-four years of imprisonment at sentencing. Morgan was free to argue for a lesser sentence and request a presentence investigation report. The circuit court accepted Morgan's guilty plea and imposed a sentence of ten years' initial

[2] The no-merit report indicates that the complaint details six controlled buys involving Morgan. The complaint in our record mentions only the results of the search warrant execution. It appears, based on other information in this record, that the search warrant application described the controlled buys, but the application is not included in the record presently before us.

confinement and ten years' extended supervision, with eligibility for the substance abuse program after five years. Morgan appeals.

Appellate counsel discusses two potential issues in the no-merit report. The first is whether Morgan's plea is knowing, intelligent, and voluntary. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Our review of the record—including the plea questionnaire and waiver of rights form and plea hearing transcript—confirms that the circuit court complied with its obligations for taking a guilty plea. *See* WIS. STAT. § 971.08; ***Bangert***, 131 Wis. 2d at 261-62; ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. We are satisfied that there is no arguable merit to a claim that the circuit court failed to fulfill its obligations or that Morgan's plea was anything other than knowing, intelligent, and voluntary.

The second issue appellate counsel discusses is whether the circuit court "abused its discretion" in sentencing Morgan.[3] *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 circuit 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

[3] The supreme court replaced the phrase "abuse of discretion" with "erroneous exercise of discretion" more than twenty-five years ago. *See* ***City of Brookfield v. Milwaukee Metro. Sewer. Dist.***, 171 Wis. 2d 400, 423, 491 N.W.2d 484 (1992).

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.*** "This court will sustain a [circuit] court's exercise of discretion if the conclusion reached by the [circuit] court was one a reasonable judge could reach, even if this court or another judge might have reached a different conclusion." ***Id.***, ¶8.

Our review of the record confirms that the circuit court appropriately considered relevant sentencing objectives and factors, explaining that this situation was "just way too serious" for probation and emphasizing the protection of the community—although Morgan was in his late fifties and had no criminal record, the circuit court noted that the items recovered from his apartment were indicative of high-level drug dealing, and the amount of heroin recovered from his apartment evidently amounts to around 2500 doses. The twenty-year sentence imposed is well within the forty-year 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). Therefore, 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.

IT IS FURTHER ORDERED that Attorney Thomas J. Erickson is relieved of further representation of Morgan 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