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February 15, 2019

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

2018AP210-CRNM State of Wisconsin v. Michael Raymond Fritz
(L.C. # 2015CF3843)

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).

Michael Raymond Fritz pled guilty on April 18, 2016, to one count of burglary of a dwelling and one count of first-degree recklessly endangering safety by use of a dangerous weapon. For the former offense, he faced maximum penalties of twelve and one-half years of

imprisonment and a $25,000 fine. *See* WIS. STAT. §§ 943.10(1m)(a) (2017-18),[1] 939.50(3)(f). For the latter offense, he faced maximum penalties of seventeen and one-half years of imprisonment and a $25,000 fine. *See* WIS. STAT. §§ 941.30(1), 939.63(1)(b), 939.50(3)(f). The circuit court imposed a seven-year sentence for the burglary, bifurcated as five years of initial confinement and two years of extended supervision. The circuit court imposed a consecutive ten-year sentence for first-degree recklessly endangering safety, bifurcated as eight years of initial confinement and two years of extended supervision. Fritz appeals.

Appellate counsel, Attorney Mark S. Rosen, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Fritz did not file a response. Based upon our independent 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, J.P. gave a statement to police on August 23, 2015, while in the hospital receiving treatment for injuries. J.P. reported that earlier that evening, he arrived at his home in Milwaukee, Wisconsin, and was carrying his one-year-old child up the stairs when he encountered a man he did not know wearing women's clothing, colorful make-up, and a white wig. The intruder attacked J.P. and his son, striking J.P. on the head with a club or pipe. J.P. chased the intruder, who ran from the home towards a brown van, produced a knife, and began stabbing at J.P. The intruder then fled in the van. The complaint further reflects that a

[1] Fritz committed his crimes and was charged with and sentenced for them while the 2015-16 version of the Wisconsin Statutes was in effect. The portions of those statutes relevant to this appeal are materially the same in the current, 2017-18 version. Accordingly, all references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

police officer located the van and found a person, later determined to be Fritz, sitting in the driver's seat and dressed in women's clothing. Fritz attempted to flee in the van, but he drove it into a tree and police took him into custody. Police searched the van and found property belonging to J.P. and his family, including women's clothing, a man's watch, and a camera. Additionally, police found a thirteen-inch wooden dowel, a steak knife, and Fritz's driver's license. The State charged Fritz with burglary by use of a dangerous weapon, two counts of first-degree recklessly endangering safety by use of a dangerous weapon, and fleeing an officer.

On the day of trial, Fritz decided to resolve the charges with a plea bargain. He agreed to plead guilty to burglary without the dangerous weapon enhancer and to one count of first-degree recklessly endangering safety by use of a dangerous weapon. The State agreed that it would move to dismiss and read in the remaining charges in this case as well as charges of attempted armed robbery, first-degree reckless injury, and battery pending against Fritz in a separate case that arose on August 18, 2015. As a disposition, the State advised that it would recommend maximum consecutive sentences. The circuit court accepted Fritz's guilty pleas, dismissed the remaining charges, and scheduled the matter for sentencing.

At the sentencing hearing, the State recommended twenty years of initial confinement, the aggregate maximum available. Fritz asked the circuit court to impose ten years of initial confinement. Both parties elected not to make any recommendation as to the length of extended supervision. The circuit court imposed an aggregate of thirteen years of initial confinement and four years of extended supervision. The circuit court also awarded Fritz the 265 days of sentence credit that he requested and ordered him to pay restitution of $3044.

In the no-merit report, appellate counsel first considers whether Fritz entered his guilty pleas knowingly, intelligently, and voluntarily. Our independent review of the record satisfies us that appellate counsel correctly analyzed this issue and that pursuit of a claim for plea withdrawal would lack arguable merit. Further discussion of this issue is not warranted.

We also agree with appellate counsel's assessment that Fritz could not challenge his sentences, but we conclude that some further discussion is warranted. 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. 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." ***Id.***, ¶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." *See* ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. We will affirm a sentence imposed by the circuit court if the record shows that the circuit court "engaged in a process of reasoning based on legally relevant factors." *See* ***State v. Odom***, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695 (citation omitted).

The record reflects a proper exercise of sentencing discretion here. The circuit court indicated that protection of the community was the primary sentencing goal, and the circuit court considered proper factors in fashioning sentences to meet that goal.

The circuit court discussed the gravity of the offenses. The circuit court observed first that the burglary and reckless endangerment offenses Fritz committed in this case involved

breaching the sanctity of a home and then attacking a person who was holding a child. The circuit court also discussed the facts underlying the charges that arose before those involving J.P. and which were dismissed and read in for sentencing purposes. *See* ***State v. Straz*kowski**, 2008 WI 65, ¶93, 310 Wis. 2d 259, 750 N.W.2d 835 (circuit court may consider read-in charges when imposing sentence). The circuit court observed that on August 18, 2015, Fritz—who was again dressed in women's clothing—approached two women on a public street and tried to seize their property, striking one of them with a metal rod until she lost consciousness. The circuit court concluded that Fritz's crimes were "incredibly violent and aggravated."

The circuit court discussed Fritz's character, noting that Fritz was sixty-three years old and was facing sentencing for serious crimes at a point in his life when people tend "to age out of the system. But that isn't true of Mr. Fritz." Further, the circuit court determined that Fritz had the longest and most serious criminal record the circuit court had ever reviewed. Specifically, the circuit court took into account that starting in 1970, when Fritz was eighteen years old, he committed a series of burglaries for which he served a series of sentences, and that he then went to prison in Illinois for thirty years following convictions for multiple armed robberies, a kidnapping, a rape, a home invasion, and an attempted homicide. *See* ***State v. Fisher*,** 2005 WI App 175, ¶26, 285 Wis. 2d 433, 702 N.W.2d 56 (significant criminal record is indicative of character). In mitigation, the circuit court recognized that Fritz emerged from prison in 2014 without resources and with little prospect of finding gainful employment. The circuit court further recognized that Fritz had a high school education and had taken some college courses, that he accepted responsibility for the offenses in this case, and that his criminal activity appeared to be fueled by alcoholism.

The circuit court considered the need to protect the public. The circuit court found that, in light of the violent nature of Fritz's criminal conduct, Fritz required close supervision for a significant period of time. The circuit court further found, however, that the risk he posed to the community was likely to diminish after he reached his mid-seventies, and the circuit court therefore concluded that thirteen years in prison was an appropriate period of initial confinement. *See* ***Gallion***, 270 Wis. 2d 535, ¶44 (sentence imposed should reflect the minimum amount of confinement consistent with the protection of the public, the gravity of the offenses, and the defendant's rehabilitative needs).

The circuit court identified the factors that it considered in choosing appropriate sentences in this matter. The factors are proper and relevant. Moreover, the sentences are not unduly harsh. A sentence is unduly harsh only when it "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 were significantly 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, the 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.

The circuit court appropriately considered whether Fritz should be found eligible to participate in the Wisconsin substance abuse program and the challenge incarceration 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. §§ 302.05(1)(am), 302.05(3)(c)2., 302.045(1), 302.045(3m)(b). 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).[2] We will sustain the circuit court's conclusions 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.

In this case, the circuit court first recognized that Fritz was statutorily disqualified from participating in the challenge incarceration program. *See* WIS. STAT. § 302.045(2)(b) (excluding an inmate from participation in the program if the inmate has attained the age of forty years before participation would begin). As to the substance abuse program, the circuit court concluded that Fritz should have the opportunity to participate but only after serving twelve years in confinement. The waiting period reflects the circuit court's determination that, given Fritz's criminal history, he must remain confined "to his mid-seventies." The circuit court's decision reflects a reasonable exercise of discretion, and a challenge to that decision would therefore lack arguable merit.

We next consider whether Fritz could pursue an arguably meritorious challenge to the order for restitution. The record shows that Fritz stipulated to the amount of restitution ordered.

[2] 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).

See WIS. STAT. § 973.20(13)(c). Therefore, he could not mount an arguably meritorious challenge to the order. *See* ***State v. Leighton***, 2000 WI App 156, ¶56, 237 Wis. 2d 709, 616 N.W.2d 126.

Finally, we observe that Fritz wrote a letter to the circuit court complaining that the Department of Corrections was deducting fifty percent of his prison wages and other funds to pay restitution, costs, fees, and surcharges, even though the judgment of conviction states that Fritz must pay his financial obligations "out of up to twenty-five percent" of his prison funds and wages. The circuit court properly declined to act on Fritz's complaint. "[T]he circuit court, acting as the sentencing court, lacks the competency to address an allegedly improper disbursements of funds by the DOC." ***State v. Williams***, 2018 WI App 20, ¶4, 380 Wis. 2d 440, 909 N.W.2d 177. Although Fritz may be able to seek relief through an administrative procedure, *see* ***id.***, ¶¶4-6, further effort to raise this issue in the instant proceeding would lack arguable merit.

Based on our independent review of the record, no other issues warrant discussion. We conclude that any further proceedings in this matter 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.

IT IS FURTHER ORDERED that Attorney Mark S. Rosen is relieved of any further representation of Michael Raymond Fritz 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