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DISTRICT II

July 17, 2019

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

2018AP357-CRNM State of Wisconsin v. Victor H. Stanley (L.C. #2016CF1022)
2018AP358-CRNM State of Wisconsin v. Victor H. Stanley (L.C. #2016CF1308)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

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).

In these consolidated appeals, Victor H. Stanley appeals from two judgments entered upon his guilty pleas to possessing a firearm after having been convicted of a crime elsewhere

that would be a felony if committed in this state, *see* WIS. STAT. § 941.29(1m)(b) (2017-18),[1] and second-degree recklessly endangering safety while using a dangerous weapon, *see* WIS. STAT. §§ 941.20(2) and 939.63(1)(b). Stanley's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). Stanley 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 no-merit report and our independent review of the record, we conclude that the judgments may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal.

In 2016CF1022, after police performed a traffic stop, searched his vehicle, and found a handgun under the driver's seat, Stanley was charged with possessing a firearm as a person convicted of an out-of-state felony and carrying a concealed weapon. In a separate complaint, 2016CF1308, Stanley was charged with first-degree recklessly endangering safety while using a dangerous weapon and possessing a firearm as a person convicted of an out-of- state felony. The incident underlying 2016CF1308 preceded the traffic stop by several months and involved Stanley intentionally discharging a firearm in the presence of other people during a disagreement.

As part of a negotiated settlement, Stanley pled guilty to possessing a firearm as a felon (2016CF1022) and to an amended charge of second-degree recklessly endangering safety while

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted. Appeal No. 2018AP357-CRNM arises from a judgment entered in Kenosha County Circuit Court case No. 2016CF1022, and appeal No. 2018AP358-CRNM arises from Kenosha County case No. 2016CF1308.

using a dangerous weapon (2016CF1308). The remaining counts were dismissed. In terms of sentencing, the parties were free to argue in 2016CF1308, and the State agreed to make no specific recommendation in 2016CF1022. The circuit court ordered a presentence investigation report (PSI). At sentencing, the court imposed the following: on the charge of recklessly endangering safety (2016CF1308), five years of initial confinement followed by four years of extended supervision; on the charge of possessing a firearm (2016CF1022), two years of initial confinement followed by four years of extended supervision, to run concurrent with 2016CF1308. The court found Stanley eligible for the Challenge Incarceration Program and the Substance Abuse Program. Stanley appeals.

Appellate counsel's no-merit report addresses whether Stanley's guilty pleas were knowingly, intelligently, and voluntarily entered. With two exceptions, the plea-taking court fulfilled the duties set forth in ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906, and WIS. STAT. § 971.08(1), and properly relied on Stanley's signed plea questionnaire to supplement its plea colloquy, *see* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). Though the circuit court did not provide the mandatory deportation warning, this does not give rise to an arguably meritorious issue because there is no suggestion in the record that Stanley's pleas are likely to result in his deportation or other enumerated consequences applicable to noncitizens, *see* § 971.08(2), and because appellate counsel affirmatively asserts that Stanley is a citizen of the United States. Stanley has not filed a response disputing appellate counsel's assertion.

Second, the circuit court did not affirmatively inform Stanley that the court was not bound by the parties' sentencing recommendations as required by ***State v. Hampton***, 2004 WI 107, ¶¶32, 38, 274 Wis. 2d 379, 683 N.W.2d 14. However, in the instant case, the plea

agreement did not contemplate any particular sentencing recommendation by the State and prior to accepting Stanley's plea, the circuit court ascertained his understanding of the maximum sentence he could receive. Additionally, the circuit court approved the bargained-for dismissal of two charges and the amendment down to second-degree recklessly endangering safety. Beyond that, there was no sentencing agreement for the circuit court to approve or reject. Any claim that Stanley should be permitted to withdraw his plea under ***Hampton*** lacks arguable merit.

Appellate counsel's no-merit report also addresses whether the circuit court properly exercised its discretion at sentencing. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. In fashioning the sentence, the circuit court considered facts relevant to the seriousness of the offense, the defendant's character and history, 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. Referring to Stanley's history, the court stated that he "had a lot of lessons and you haven't learned." The court determined that punishment and community protection were proper objectives, characterizing Stanley as "kind of a dangerous person in our community because you don't abide by the rules that you had which is you're not supposed to ever possess a firearm for the rest of your life [,]" and observing that he entered a "showdown without calling the police" and shot a firearm around other people. While the sentencing court did not specifically use the terms "gravity of the offense," "character of the defendant," and "need to protect the public," and did not expressly consider probation, the amount of necessary explanation varies from case to case and we do not require the recitation of magic words. ***Gallion***, 270 Wis. 2d 535, ¶¶39, 49. On review, we "search the record to determine whether in the exercise of proper discretion the sentence imposed can be sustained." ***McCleary v. State***, 49 Wis. 2d 263, 282, 182 N.W.2d 512

(1971). Our review of the record satisfies us that the circuit court's sentence represents a proper exercise of discretion. To the extent the court did not explicitly mention probation, both the State and the PSI writer recommended prison and the court was aware that Stanley had previously served time in prison. The sentencing court's findings concerning Stanley's history and its emphasis on the objectives of punishment and community protection support its implicit rejection of probation. Further, under the circumstances, it cannot reasonably be argued that Stanley's global nine-year bifurcated sentence, which is well below the maximum of twenty-five years,[2] is so excessive as to shock public sentiment. *See* ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). We agree with appellate counsel that a challenge to Stanley's sentence would lack arguable merit.

Our review of the record discloses no other potential issues for appeal.[3] Accordingly, this court accepts the no-merit report, affirms the convictions, and discharges appellate counsel of the obligation to further represent Stanley on appeal. Therefore,

IT IS ORDERED that the judgments are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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[2] Both crimes of conviction were class G felonies carrying a ten-year maximum. In addition, the dangerous weapon enhancer added another five years of potential initial confinement to Stanley's sentence for recklessly endangering safety. As such, Stanley faced a maximum sentence of fifteen years of initial confinement followed by ten years of extended supervision.

[3] We have considered appellate counsel's discussion of whether Stanley's codefendant's disparate sentence gives rise to an issue of arguable merit. We agree with appellate counsel's analysis and conclusion that no issue of merit arises from the codefendant's sentence and we will not discuss this point further.

IT IS FURTHER ORDERED that Attorney Katie Babe is relieved from further representing Victor H. Stanley in these consolidated appeals. 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