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DISTRICT I

August 22, 2019

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

2018AP1266-CRNM State of Wisconsin v. Deanthony L. Bradley (L.C. # 2016CF3519)

Before Brash, 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).

Deanthony L. Bradley appeals from a judgment, entered upon his guilty plea, convicting him on one count of first-degree reckless homicide as a party to a crime. Appellate counsel, Carly Cusack, has filed a no-merit report, pursuant to ***Anders v. California***, 386 U.S. 738 (1967),

and WIS. STAT. RULE 809.32 (2017-18).[1] Bradley 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 that there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

Milwaukee police responded to a shooting on July 13, 2016. The victim, still in her vehicle, had been shot once and died from her injury. A witness had observed three males—including one called "Duke," whom the witness knew from the neighborhood—approach the vehicle while it was stopped at an intersection. The witness saw Duke with a firearm and saw him shoot the vehicle. The witness later identified Bradley as the shooter from a photo array.

Bradley gave a statement to police. On the date of the incident, he was at a girl's house along with his friends, William Bounds and Jeremiah Flowers, and his uncle, Carlando Mukes. Bradley told police that about thirty to forty-five minutes before the shooting, Mukes had given him a gun, and he was being pressured by Mukes and the others to commit a robbery. When the victim's vehicle pulled up nearby, Flowers identified it as a possible target. Bradley approached the driver's window with Bounds as back up while Flowers approached the passenger window. Bradley stuck the gun inside the driver's window, approximately five inches from the victim's head, and told her, "Give me all this." Bradley said the victim grabbed at the gun and, as they struggled and the victim started to drive away, Bradley heard the gun go off with a loud "pow." Bradley indicated the gun just went off because he had too much force on the trigger and insisted that the firing of the weapon was an accident.

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

The victim crashed the car, after which Bounds approached the vehicle and took her purse. He rifled through it and took a twenty-dollar bill. Flowers also told police he watched Bounds take the purse. Bounds told police he put the purse down on the ground after a woman yelled at him for taking it.

Bradley, Bounds, Flowers, and Mukes were charged as co-defendants. Bradley was charged with one count of first-degree reckless homicide with a dangerous weapon as a party to a crime, armed robbery with the use of force as a party to a crime, and possession of a firearm by a person previously adjudicated delinquent. Bounds and Flowers were both charged in relation to the robbery, and Mukes—who denied any involvement at all to police—was charged with possession of a firearm by a felon.

Bradley agreed to resolve his case through a plea agreement. In exchange for his guilty plea to first-degree reckless homicide, the State would dismiss the dangerous weapon enhancer and the other two charges. The State would also refrain from recommending any particular length of sentence. The circuit court conducted a plea colloquy with Bradley and accepted his guilty plea. Later, it sentenced Bradley to thirty years of initial confinement and fifteen years of extended supervision. Bradley appeals.[2]

The first potential issue appellate counsel discusses is whether Bradley should be allowed to withdraw his plea as not knowing, intelligent, and voluntary. Our review of the record—including the plea questionnaire and waiver of rights form, addendum, and attached jury

[2] Appellate counsel brought a postconviction motion to correct the judgment of conviction because the original judgment failed to remove the dangerous weapon enhancer. The circuit court granted the request to amend the judgment.

instructions for first-degree reckless homicide—confirms that the circuit court largely complied with its obligations for taking guilty pleas, pursuant to WIS. STAT. § 971.08, ***State v. Bangert***, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986), and subsequent cases, as collected in ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.

Appellate counsel notes that the circuit court did not review party to a crime liability with Bradley, and we observe that the party to a crime jury instructions were not a part of the attachment to the plea questionnaire. However, in this case, this omission does not give rise to an arguably meritorious issue.

The facts alleged in the complaint, which included Bradley's own statement to police, establish his direct liability for the homicide as the principal actor.[3] Bradley admitted that he was in control of the gun, that he stuck it in the car window near the victim's head, and that the gun discharged while he was holding it. The circuit court personally reviewed the elements of first-degree reckless homicide with Bradley. Under this particular set of circumstances, when Bradley could be held directly liable for the reckless homicide, it was not necessary for the circuit court to additionally explain party to a crime liability. *See* ***State v. Brown***, 2012 WI App 139, ¶¶12-13, 345 Wis. 2d 333, 824 N.W.2d 916.

Based on the foregoing, there is no arguable merit to a claim that the circuit court failed to conduct a proper plea colloquy, and we agree with appellate counsel's analysis in the no-merit

[3] We recognize that, at the plea hearing, Bradley objected to certain portions of the complaint as the factual basis, including the portion that recited the witness's statement. However, the portions to which Bradley did not object include his statement to police and are sufficient to establish his direct liability for the homicide, even with the objected-to portions excluded from consideration.

report that there is no arguable merit to a claim that Bradley's plea was anything other than knowing, intelligent, and voluntary.

The other issue appellate counsel discusses is whether Bradley could seek resentencing because the circuit court failed to consider proper factors or because the sentence was harsh and excessive—in other words, whether the circuit court erroneously exercised its sentencing discretion. *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 court should consider several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, and may consider a variety of 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* ***id.*** Additionally, we will sustain the circuit court's discretionary decision if the decision "was one a reasonable judge could reach, even if this court or another judge might have reached a different conclusion." *See* ***id.***, ¶8.

Our review of the record confirms that the court appropriately considered only relevant sentencing objectives and factors, including multiple positive character traits of Bradley, and no improper factors. The forty-five-year sentence imposed is well within the sixty-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). Thus, we agree with appellate counsel's analysis in the no-merit report that there would be no arguable merit to a challenge to the court's sentencing discretion.[4]

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 Carly Cusack is relieved of further representation of Bradley 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

[4] Restitution was also ordered; Bradley stipulated to the amount.