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September 11, 2019

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

2018AP889-CRNM State of Wisconsin v. Charles Leon Banister (L.C. #2016CF1697)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, 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).

Charles Leon Banister appeals from a judgment convicting him of one count of third-degree sexual assault and from an order denying in part his postconviction motion seeking to

reduce his fine. Banister's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2017-18)[1] and ***Anders v. California***, 386 U.S. 738 (1967). Banister received a copy of the report and has filed a response. Upon consideration of the report, Banister's response, and our independent review of the record, we conclude that the judgment and order may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

According the criminal complaint, the victim called police to report that she had just been sexually assaulted by an unknown male wearing a bandana-like cover on his face. He struck her in the head with a handgun, forced her into her apartment at gunpoint, and sexually assaulted her several times, both orally and vaginally. Banister was eventually identified as the perpetrator through DNA evidence. The State charged him with two counts of first-degree sexual assault, each a Class B felony. *See* WIS. STAT. § 940.225(1)(b). At the time the complaint was filed, Banister was already in prison serving a Milwaukee County sentence for second-degree sexual assault of a child.

Pursuant to a plea agreement, Banister pled guilty to an amended charge of third-degree sexual assault, a Class G felony. The State would dismiss and read in count two of the information and would argue for prison, "which could be concurrent to his present sentence." Banister informed the court he did not want a presentence investigation report (PSI). He wished to proceed to sentencing. The circuit court imposed a ten-year sentence, with five years of initial

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

confinement followed by five years of extended supervision, to run consecutive to the sentence he was then serving. The court also imposed the maximum fine of $25,000.

Postconviction, Banister filed a motion asking the circuit court to vacate the fine "and, following a hearing, impose a fine in an amount that is within Mr. Banister's ability to pay." At a hearing on the motion, the circuit court indicated it would grant the motion in part and modified the fine to $8400. Banister appeals.

Appellate counsel's no-merit report addresses the potential issues of whether Banister's guilty plea was knowingly, intelligently, and voluntarily entered, whether the sentence was the result of an erroneous exercise of discretion, and whether there exists an arguably meritorious challenge to the circuit court's decision on Banister's postconviction motion, which declined to eliminate the fine but reduced it from $25,000 to $8400. Our review of the record persuades us that no issue of arguable merit could arise from these points. Further, the record supports no other possible issues. This court is satisfied that the no-merit report properly analyzes the issues it raises as without merit, and this court will not discuss them further except as necessary to address Banister's response.

In his response, Banister asserts that the circuit court erroneously exercised its discretion at sentencing by characterizing him as "dangerous" and a "sexual perpetrator" who is likely to reoffend once released from incarceration. Banister complains that by these comments, the circuit court improperly "predict[ed] the future." We disagree.

It is a well-settled principle of law that 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. On review, we afford the sentencing court a strong presumption of reasonability, and if discretion

was properly exercised, we follow "a consistent and strong policy against interference" with the court's sentencing determination. ***Id.***, ¶18. We will sustain a sentencing court's reasonable exercise of discretion even if this court or another judge might have reached a different conclusion. ***State v. Odom***, 2006 WI App 145, ¶8, 294 Wis. 2d 844, 720 N.W.2d 695.

Here, in fashioning the sentence, the circuit court properly considered the seriousness of the offense, which it found to be "vicious, cruel, mean," and "animalistic"; Banister's character and history, which was characterized by "eerily similar" behaviors; and the need to protect the public. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court's determination that Banister poses "a significant threat to reoffend" is supported by the record, including the nature and circumstances of Banister's prior offenses, and the factual basis set forth in the seventeen-page criminal complaint filed in connection with the instant case. At sentencing, the circuit court applied the correct legal standard and did not consider improper factors in reaching an explainable, reasonable conclusion.

Banister also asserts that the circuit court improperly imposed a "harsh and excessive sentence." A sentence is unduly harsh only if its length 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." ***State v. Davis***, 2005 WI App 98, ¶15, 281 Wis. 2d 118, 698 N.W.2d 823 (quoting ***Ocanas v. State***, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975)). Given the facts of this case along with the bargained-for charge reduction, we cannot conclude that the ten-year sentence is so excessive or unusual as to shock public sentiment. *See* ***State v. Kaczynski***, 2002 WI App 276, ¶13, 258 Wis. 2d 653, 654 N.W.2d 300 (noting that where defendant received the benefit of a substantial

charging concession, the trial court's imposition of the maximum sentence did not shock "the community's sense of justice").

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

IT IS ORDERED that the judgment and the order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Suzanne L. Hagopian and Kelsey Loshaw are relieved from further representing Charles Leon Banister in this appeal. 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