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DISTRICT I

January 10, 2020

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

2017AP1523-CRNM State of Wisconsin v. Romello R. Anderson (L.C. # 2016CF1528)

Before Kessler, Dugan and Donald, 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).

Romello R. Anderson appeals from a judgment, entered upon his no-contest plea, convicting him on one count of second-degree reckless homicide with a dangerous weapon as a party to a crime. Appellate counsel, George M. Tauscheck, 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] Anderson 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.

Based on the allegations in the criminal complaint, we discern the following narrative. On November 8, 2015, Anderson and others drove with Nadirah King to a Milwaukee location so that King could fight another woman, Domonique Smith. Prior to the fight, Smith called her boyfriend, Dominique Jordan, and asked him to pick up their children. Jordan came to the location. As the fight began, Anderson had a gun, which he waved around while telling other spectators not to get involved. As the fight was under way, shots were fired. Jordan, who was running to his car, was shot and killed. A woman at the scene, D.H., was shot in the foot. Police recovered a .45-caliber semi-automatic pistol, two .45-caliber casings, three 9-millimeter casings, and four .380-caliber casings, but were unable to make an immediate arrest.

In February 2016, Milwaukee police received a phone call from the Menomonee Falls Police Department, which had a person in custody with information about the homicide. This person, Johnathan Harris, was dating Anderson's mother. He relayed that in the fall of 2015, between the end of September and Christmas, Anderson called him and said that he had been shot. Harris told Anderson to go to the hospital, but Anderson responded that he could not because the "guy that shot him was dead." Harris then went to Anderson's house, where

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

Anderson said, "I had to kill that [guy]." According to Harris, Anderson also told him that Jordan had shot first.

When Anderson was interviewed, he denied having a gun and said that Breon Williams and Terrel Brooks were the ones who fired guns. When Williams was interviewed, he identified Anderson as his cousin and told police that Anderson fired back at someone who pulled out a handgun and fired a shot; he (Williams) then took out his own gun and began shooting.

Anderson was charged with one count of first-degree reckless homicide and one count of first-degree recklessly endangering safety, both as a party to a crime.[2] He agreed to resolve his case through a plea to an amended charge of second-degree reckless homicide with a dangerous weapon as a party to a crime. In exchange, the State would dismiss and read in the endangering safety charge and would refrain from making a specific sentence recommendation. After a colloquy, the circuit court accepted Anderson's no-contest plea. It later sentenced him to fourteen years of initial confinement and six years of extended supervision.

The first potential issue counsel identifies is whether Anderson could seek to withdraw his plea as not knowingly, intelligently, and voluntarily entered. 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, 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. We also note that the circuit court explained that the no-contest plea would have the practical effects

[2] Williams was charged with the same offenses in the same complaint.

of a guilty plea; appropriate jury instructions were attached for second-degree reckless homicide, the use of a dangerous weapon enhancer, and the aiding-and-abetting party to a crime modifier; and an addendum to the plea questionnaire had "self-defense" specifically underlined in the list of defenses being given up by the plea.[3] Accordingly, there is no arguable merit to a claim that the circuit court failed to fulfill its obligations or that Anderson's plea was anything other than knowing, intelligent, and voluntary.

The other issue counsel addresses is 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 a variety of 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 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.***

Our review of the record confirms that the court appropriately considered relevant sentencing objectives and factors. The twenty-year sentence imposed is well within the thirty-

[3] The State, in explaining the plea agreement to the circuit court, acknowledged that it was possible Jordan had shot first, but Jordan had been shot in the back and the woman shot in the foot had no weapon, so a self-defense strategy might or might not succeed.

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). There would be no arguable merit to a challenge to the circuit 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 George M. Tauscheck is relieved of further representation of Anderson 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] At sentencing, the circuit court declined to make Anderson eligible for the earned release program or the challenge incarceration program, stating it "would unduly depreciate the nature of the offense." Anderson later sent a *pro se* letter to the circuit court, asking it to consider making him eligible for the challenge incarceration program. The circuit court responded that Anderson was statutorily ineligible for the program. We observe that this response was accurate, and we add that Anderson is also statutorily ineligible for the earned release program. Second-degree reckless homicide is contrary to WIS. STAT. § 940.06, and persons convicted of a crime specified in ch. 940 are not eligible for participation in either program. *See* WIS. STAT. § 973.01(3g), (3m).