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April 14, 2020

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Bruce A. Handel Jr.
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You are hereby notified that the Court has entered the following opinion and order:

2019AP1616-CRNM State of Wisconsin v. Bruce A. Handel, Jr. (L.C. # 2018CF1499)

Before Donald, J.¹

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).

Bruce A. Handel, Jr., appeals from an amended judgment,² entered upon his guilty pleas, convicting him on one count of obstructing an officer and one count of disorderly conduct as an

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

act of domestic violence. Appellate counsel, Becky Van Dam, has filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Handel 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 amended judgment.

Two citizen witnesses called 911 to report an altercation. The first call came from a bus driver, who reported a man running in front of the bus with a stroller. As Greenfield police were responding, a second witness called to report that, while she was stopped at a red light, she observed a man shove a woman, then pick up the woman and "body slam" her to the ground. When officers arrived, they found Handel and S.L.G. Although it is unclear from the record whether Handel and S.L.G. were married at the time of the altercation, the couple did have two children together.

The officers attempted to ascertain what was happening. Handel told officers they were only arguing over a phone. According to the criminal complaint, Handel continued to walk away from the officers despite being told to stay in place and despite being asked for identification, which Handel did not readily provide. Eventually, the officers attempted to take control of Handel, resulting in a struggle in which one officer sprained his ankle.

² The no-merit notice of appeal indicates that Handel is appealing from a judgment entered on December 19, 2018. While the sentencing hearing in this matter was held on December 19, the resulting judgment of conviction was not entered until December 24, 2018. Additionally, the original judgment imposed an excessive sentence and was later amended by a judgment entered on May 8, 2019. We therefore construe Handel's notice of appeal to be from the amended May 8 judgment.

The State charged Handel with one count of obstructing or resisting an officer causing a soft tissue injury and one count of misdemeanor disorderly conduct as an act of domestic violence, both as a habitual offender. Handel eventually agreed to enter guilty pleas to an amended charge of simple obstruction, which reduced the offense from a Class H felony to a Class A misdemeanor, and misdemeanor disorderly conduct; the habitual criminality enhancer was to be dropped from both charges. The State agreed to recommend one year of jail time in the House of Correction, imposed and stayed for two years' probation, with probation conditions left to the circuit court's discretion. The circuit court accepted Handel's pleas and imposed sentence at a later date. We will discuss the details of Handel's sentences in greater detail below.

The first potential issue appellate counsel discusses in the no-merit report is whether Handel's pleas were knowing, intelligent, and voluntary. 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 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. Thus, there is no arguable merit to a claim that the circuit court failed to fulfill its obligations for taking a plea, and we agree with the no-merit report's analysis and conclusion that there is no arguable merit to a claim that Handel's pleas were anything other than knowing, intelligent, and voluntary.

The second issue appellate counsel addresses in the no-merit report is whether Handel's "sentence was illegal or otherwise improper." This includes a discussion of whether the circuit court properly 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 only relevant sentencing objectives and factors, and considered no improper factors.

At the time of sentencing, however, the circuit court proceeded as though the habitual criminality enhancers had not been dismissed. With the enhancer, each misdemeanor sentence carried a potential maximum of two years' imprisonment. *See* WIS. STAT. § 939.62(1)(a). With the enhancer removed, the potential maximum sentences were nine months for the obstruction and ninety days for the disorderly conduct. *See* WIS. STAT. §§ 946.41(1), 947.01(1), 939.51(3)(a)-(b). The circuit court sentenced Handel to fourteen months' in the House of Correction on each count, imposed and stayed in favor of two years' probation.

This sentence structure prompted a letter from the Department of Corrections, which explained that a sentence greater than twelve months imprisonment generally must be served in the Wisconsin state prisons, not a county jail, and a prison sentence must be bifurcated into terms of initial confinement and extended supervision. *See* WIS. STAT. §§ 973.01(1), 973.02. Attorney Van Dam also submitted a letter to the circuit court on Handel's behalf, seeking "a modification of his sentence to fit within the statutory maximum of each offense."

The circuit court held a brief hearing for which Handel was not produced. The circuit court explained that it did not believe the hearing was a “re-sentencing on new evidence or something like that” but, rather, a simple “ministerial” task. The circuit court revised Handel’s sentences to nine months in jail for the obstructing and ninety days in jail for the disorderly conduct, to be served consecutively. These sentences were also imposed and stayed in favor of two years’ probation.

While the original fourteen-month sentences exceeded the maximum allowed by law for the non-enhanced charges, the circuit court appropriately remedied the excess sentence by commutation. *See* WIS. STAT. § 973.13. Because commutation—not resentencing—is the sole prescribed remedy for a sentence that exceeds the legal maximum, there is no arguable merit arising from Handel’s absence at the hearing. *Cf.* WIS. STAT. § 971.04(1)(g) (defendant “shall be present” at “imposition of sentence”). The final sentence is within the range allowed by law and is not so excessive as to shock the public’s sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975). Accordingly, we agree with the no-merit report’s ultimate conclusion that there is no arguable merit to further challenging Handel’s sentences.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the judgment appealed from is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Becky Van Dam is relieved of further representation of Handel 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