OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

May 27, 2020

To:

Hon. Glenn H. Yamahiro
Circuit Court Judge
901 N. 9th St., Br. 34
Milwaukee, WI 53233-1425

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Dustin C. Haskell
Assistant State Public Defender
735 N. Water St., Rm. 912
Milwaukee, WI 53203

Karen A. Loebel
Deputy District Attorney
821 W. State St.
Milwaukee, WI 53233

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Absalom B. Israel 628582
Kettle Moraine Correctional Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2019AP1455-CRNM State of Wisconsin v. Absalom B. Israel (L.C. # 2018CF1798)

Before Brash, P.J., Dugan and White, 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).

Absalom B. Israel pled guilty to second-degree recklessly endangering safety. He faced maximum penalties of a $25,000 fine and ten years of imprisonment. *See* WIS. STAT. §§ 941.30(2) (2017-18),[1] 939.50(3)(g). The circuit court imposed a seven-year term of

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

imprisonment bifurcated as four years of initial confinement and three years of extended supervision. The circuit court ordered Israel to serve the sentence consecutively to the term of reconfinement he was already serving following revocation of his extended supervision in another matter, and the circuit court found him ineligible for the challenge incarceration program and the Wisconsin substance abuse program. Israel appeals.

Appellate counsel, Attorney Dustin C. Haskell, filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Israel did not file a response. Upon consideration of the no-merit report and an independent review of the record as mandated by ***Anders***, we conclude that no arguably meritorious issues exist for an appeal, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

According to the criminal complaint, a Milwaukee police officer was in a marked squad car at approximately 7:10 p.m. on April 12, 2018, when he saw a Chevrolet Malibu travelling at a high rate of speed on a city street in Milwaukee, Wisconsin. The officer unsuccessfully attempted to stop the Chevrolet, which accelerated and fled. Two more officers in marked squad cars joined in pursuit of the fleeing Chevrolet. The pursuit continued through the city for twenty-nine minutes and covered twenty-one miles. During the pursuit, the Chevrolet reached speeds of over eighty miles per hour and the driver disregarded numerous stop signs and red stop lights. Towards the end of the pursuit, the officers observed the driver and the passenger of the Chevrolet switch seats while the car was moving. The Chevrolet then struck a curb, causing sufficient damage to the Chevrolet so as to disable it. When the officers reached the disabled vehicle, they identified Israel as the person who had been the driver for most of the chase and who was in the passenger seat at the time of the crash. Police identified Armani T. Henderson as the other occupant of the vehicle.

Police interviewed Henderson after giving him the warnings required by ***Miranda v. Arizona***, 384 U.S. 436, 479 (1966). He told the officers that Israel was driving the Chevrolet until the end of the pursuit, when Israel and Henderson traded seats. Henderson explained that the pair attempted to flee because neither of them had a driver's license and because Israel was serving a term of extended supervision and was not supposed to have any contact with the police. The State charged Israel as a repeat offender with fleeing an officer and with first-degree recklessly endangering safety.

Israel decided to resolve the charges against him with a plea agreement. Pursuant to its terms, the State filed an amended information charging Israel with a single count of second-degree recklessly endangering safety, and the State agreed that, upon his plea to the amended charge, the State would recommend a prison sentence without specifying any recommended terms of that sentence. The circuit court accepted Israel's guilty plea to the amended charge, and the matter proceeded immediately to sentencing.

We first consider whether Israel could pursue an arguably meritorious claim for plea withdrawal on the ground that his guilty plea was not knowing, intelligent, and voluntary. *See* ***State v. Bangert***, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986). At the outset of the plea and sentencing hearing, the circuit court established that Israel was twenty-one years old and had obtained a high school equivalency degree. The circuit court also established that Israel had signed a guilty plea questionnaire and waiver of rights form and that he understood the contents of the form and its attachments. *See* ***State v. Pegeese***, 2019 WI 60, ¶37, 387 Wis. 2d 119, 928 N.W.2d 590. The circuit court then conducted a colloquy with Israel that complied with the circuit court's obligations when accepting a plea other than not guilty. *See* ***id.***, ¶23; *see also* WIS. STAT. § 971.08.

In the no-merit report, appellate counsel examines whether Israel could pursue an arguably meritorious challenge to the validity of his guilty plea on the ground that the circuit court explained to him that the maximum penalties he faced included "ten years in jail" rather than ten years of imprisonment. *Cf.* WIS. STAT. § 939.50(3)(g). We agree with appellate counsel that such a challenge would lack arguable merit. Before accepting a guilty plea, a circuit court must ensure that the defendant understands "the potential punishment if convicted," but a circuit court is not required to "parse out and specifically advise the defendant" regarding where and how the defendant will serve the component parts of a sentence.[2] *See* ***State v. Taylor***, 2013 WI 34, ¶42 n.12, 347 Wis. 2d 30, 829 N.W.2d 482. Here, Israel entered his guilty plea knowing that he faced maximum penalties that included both a $25,000 fine and ten years of incarceration, *see* WIS. STAT. §§ 939.50(3)(g), 973.01(8)(a)4., and the circuit court's colloquial use of the term "jail" when describing the maximum penalties did not undermine the advisements Israel received regarding his potential punishment. *See* ***State v. Hampton***, 2004 WI 107, ¶43, 274 Wis. 2d 379, 683 N.W.2d 14 (explaining that a valid plea does not require the circuit court to use "magic words or an inflexible script").

Upon review of the totality of the record—including the plea questionnaire and waiver of rights form and addendum, the attached jury instructions describing the elements of the crime to which Israel pled guilty, and the plea hearing transcript—we conclude that Israel entered his

---

[2] We observe that the Department of Corrections determines the institution in which Israel will serve his term of confinement and that his placement may change during that term. *See* WIS. ADMIN. CODE §§ DOC 302.07 *et. seq.* (Oct. 2018); *see also* ***State v. Schladweiler***, 2009 WI App 177, ¶10, 322 Wis. 2d 642, 777 N.W.2d 114, *abrogated on other grounds by* ***State v. Harbor***, 2011 WI 28, ¶¶46-47, 52 & n.11, 333 Wis. 2d 53, 797 N.W.2d 828.

guilty plea knowingly, intelligently, and voluntarily. Further pursuit of this issue would lack arguable merit.

We also conclude that Israel could not pursue an arguably meritorious challenge to the circuit court's exercise of sentencing discretion. *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. The circuit court indicated that public protection was the primary sentencing goal, and the circuit court discussed the sentencing factors that it viewed as relevant to achieving that goal. *See* ***id.***, ¶¶41-43. The sentence that the circuit court selected was well within the limits of the maximum sentence allowed by law and cannot be considered unduly harsh or unconscionable. *See* ***State v. Grindemann***, 2002 WI App 106, ¶¶31-32, 255 Wis. 2d 632, 648 N.W.2d 507.

Finally, we have considered whether Israel could pursue an arguably meritorious claim that the circuit court erred by finding him ineligible to participate in the challenge incarceration program and the Wisconsin substance abuse program. Successful completion of either prison program permits an inmate serving a bifurcated sentence to convert his or her remaining initial confinement time to extended supervision time. *See* WIS. STAT. §§ 302.045(1), 302.045(3m)(b), 302.05(1)(am), 302.05(3)(c)2. A circuit court exercises its discretion when determining a defendant's eligibility for these programs, and we will sustain the circuit court's conclusions if they are supported by the record and the overall sentencing rationale. *See* ***State v. Owens***, 2006 WI App 75, ¶¶7-9, 291 Wis. 2d 229, 713 N.W.2d 187; WIS. STAT. § 973.01(3g)-(3m).[3] In this

[3] The Wisconsin substance abuse program was formerly known as the earned release program. Effective August 3, 2011, the legislature renamed the program. *See* 2011 Wis. Act 38, § 19; WIS. STAT. § 991.11. The program is identified by both names in the current version of the Wisconsin Statutes. *See* WIS. STAT. § § 302.05; 973.01(3g).

case, the circuit court explained that Israel was ineligible for both programs because the period of confinement imposed "is required to protect the community." The eligibility decision was thus consistent with the sentencing rationale. Further pursuit of this issue would lack arguable merit.

Our independent review of the record does not disclose any other potential issues warranting discussion. We conclude that further postconviction or appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Dustin C. Haskell is relieved of any further representation of Absalom B. Israel. *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