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DISTRICT I

July 7, 2020

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

2019AP1779-CRNM State of Wisconsin v. Kenyon Shequille Strong (L.C. # 2016CF4248)

Before Dugan, Donald 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).

Kenyon Shequille Strong appeals from a judgment, entered upon his guilty pleas, on four drug-related charges. Appellate counsel, Leon W. Todd, III, 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] Strong

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

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 appellate counsel's report, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

Strong was charged with three counts of manufacture or delivery of one to five grams of cocaine and one count of manufacture or delivery of five to fifteen grams of cocaine, all as a habitual criminal, following controlled buys made by Milwaukee police using a confidential informant in July and August 2016. Strong agreed to resolve his charges through a plea agreement. In exchange for his guilty pleas to the four counts as charged, the State agreed to limit its sentence recommendation to prison, without specifying a length. It also agreed not to charge Strong for two other controlled buys. The circuit court accepted Strong's plea and sentenced him to two years of initial confinement and three years of extended supervision on each count. The sentences for counts one through three were consecutive and the fourth sentence was concurrent, resulting in a total sentence of six years of initial confinement and nine years of extended supervision.

The first potential issue appellate counsel addresses in the no-merit report is whether the circuit court followed the appropriate procedures for ensuring a knowing, intelligent, and voluntary plea. Our review of the record—including the plea questionnaire and waiver of rights form and plea hearing transcript—confirms that the circuit court generally 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 ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. In particular, we note that the record reflects that the circuit court appropriately ascertained a factual basis for the pleas. *See* § 971.08(1)(b).

The circuit court did not expressly review the elements of delivery of a controlled substance with Strong. However, it did take other steps to establish his understanding of the nature of the crimes. *See* WIS. STAT. § 971.08(1)(a); ***Bangert***, 131 Wis. 2d at 268. It first asked Strong whether he understood that the State would have to prove each element beyond a reasonable doubt in order to convict him on any one of the crimes, and Strong answered, "Yes." The circuit court next noted that a copy of the jury instruction for delivery of a controlled substance, WIS JI—CRIMINAL 6020, listed the elements of the offense and had been submitted to the court bearing Strong's initials next to each element. The circuit court asked whether Strong had reviewed the instruction with counsel, as well as the basis for the habitual criminality enhancer. Strong answered, "Yes, I did."

Therefore, based on the entirety of the record, we are satisfied that there is no arguable merit to a claim that the circuit court failed to fulfill its obligations during the plea colloquy; that Strong's pleas were anything other than knowing, intelligent, and voluntary; or that the pleas were not supported by a sufficient factual basis.

The other issue appellate counsel addresses in the no-merit report 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 other 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 circuit court appropriately considered relevant sentencing objectives and factors. The combination of consecutive and concurrent sentences totaling fifteen years' imprisonment is well within the seventy-six and one-half years 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.

Our independent review of the record reveals no other potential issues of arguable merit.[2]

Upon the foregoing, therefore,

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

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[2] We note, for completeness, that the circuit court originally ordered Strong to repay $1600 in buy money as restitution. However, this court held in ***State v. Evans***, 181 Wis. 2d 978, 979, 512 N.W.2d 259 (Ct. App. 1994), that no statute or other authorization existed for ordering buy money to be repaid as restitution. While the State in ***Evans*** had argued persuasively that such funds should be recoverable, we noted that the legislature "ha[d] not so provided … and it is not within our province to write or rewrite state statues." ***Id.*** at 984. Subsequent to ***Evans***, the legislature enacted 1995 Wis. Act 53, creating WIS. STAT. § 973.06(1)(am) and allowing recovery of buy money as an item of costs, provided certain conditions are fulfilled.

Attorney Todd filed a postconviction motion on Strong's behalf, raising this issue regarding the restitution award. The circuit court granted the motion, converting the buy money award from restitution to costs and vacating the restitution surcharges. Accordingly, no further issue of arguable merit exists regarding the original award of buy money as restitution.

IT IS FURTHER ORDERED that Attorney Leon W. Todd, III, is relieved of further representation of Strong 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