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DISTRICT I

August 18, 2020

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

2020AP716-CRNM State of Wisconsin v. Devon Dalain Johnson
(L.C. # 2018CF5114)

Before Brash, P.J., 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).

Devon Dalain Johnson appeals from a judgment, entered upon his guilty pleas, convicting him on one count of robbery with the threat of force and one count of robbery with the use of force as a party to a crime. Appellate counsel, Thomas J. Erickson, 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] Johnson 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.

According to the criminal complaint, Johnson and another man robbed a Walgreens store by leaning over the counter, yelling at the cashier, and taking the entire cash drawer when it was opened to complete a transaction. The two men were apprehended a short time after the robbery when police spotted them on a bike path. Both men were taken into custody and advised of their rights, and both admitted to participating in the Walgreens robbery. The detective interviewing Johnson realized that he matched the description of a robbery suspect who had reportedly demanded a pizza from a delivery driver at knifepoint the day before. The detective asked Johnson about that crime. Johnson admitted ordering and taking the pizza, but denied that he had used a weapon.

Johnson was charged with one count of armed robbery and one count of robbery with the use of force as party to a crime. Johnson agreed to resolve the charges through a plea agreement. Pursuant to the agreement, the armed robbery charge would be amended to robbery with the threat of force, Johnson would plead guilty to both robberies, and the State would recommend a global sentence of twenty-four months of initial confinement followed by thirty months of

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

extended supervision, imposed and stayed in favor of three years' probation with eight months in jail as condition time.

The circuit court accepted Johnson's pleas and ordered a presentence investigation report. At sentencing, Johnson joined the State's sentencing recommendation. The circuit court, however, rejected the recommendation and imposed sentences of six years' initial confinement and three years' extended supervision, to be served concurrently with each other but consecutive to any other sentence. Johnson appeals.

Appellate counsel discusses two issues in the no-merit report; the first is whether Johnson's pleas were knowing, intelligent, and voluntary. When accepting guilty pleas, the circuit court has a number of duties "designed to ensure that a defendant's plea is knowing, intelligent, and voluntary." *See* ***State v. Brown***, 2006 WI 100, ¶23, 293 Wis. 2d 594, 716 N.W.2d 906. Our review of the record—including the plea questionnaire and waiver of rights form, jury instruction printouts initialed by Johnson, and the plea hearing transcript—confirms that the circuit court complied with those duties. *See* ***id.***, ¶35; *see also* WIS. STAT. § 971.08, ***State v. Bangert***, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986). We are satisfied that there is no arguable merit to a claim that the circuit court failed to fulfill its duties during the plea colloquy or that Johnson's pleas were anything other than knowing, intelligent, and voluntary.

The other issue appellate counsel discusses 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 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.***

Circuit courts "are not rubber stamps." *See* ***State v. Johnson***, 158 Wis. 2d 458, 465, 463 N.W.2d 352 (Ct. App. 1990), *abrogated on other grounds by* ***State v. Harbor***, 2011 WI 28, 333 Wis. 2d 53, 797 N.W.2d 828. They accept sentence recommendations "only if they can independently conclude that the recommended sentence is appropriate in light of the acknowledged goals of sentencing as applied to the facts of the case." *See* ***id.***

Here, the record reflects in great detail the circuit court's reasons for rejecting the probationary sentence jointly offered by Johnson and the State. The record further reflects that the circuit court considered relevant sentencing objectives and factors in devising its own sentence structure. The concurrent sentences totaling nine years' imprisonment are well within the thirty-year range authorized by law, *see* ***State v. Scaccio***, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449, and are 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). Therefore, there is 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.

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 Thomas J. Erickson is relieved of further representation of Johnson 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