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**DISTRICT I**

May 18, 2021

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

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2020AP885-CRNM      State of Wisconsin v. John Alvin French (L.C. # 2017CF4930)

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).**

John Alvin French appeals from a judgment, entered upon his guilty pleas, convicting him of two felony offenses and two misdemeanor offenses. Appellate counsel, Vicki Zick, has filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT.

RULE 809.32 (2019-20).<sup>1</sup> French 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 that, subject to correction of a minor clerical error in the judgment of conviction, there is no issue of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

In a criminal complaint filed in October 2017, the State charged French with two counts of fraudulent writings and one count of forgery, all as a party to a crime, and one count of conspiracy to commit theft by fraud. These charges were based on an ongoing, multi-state scheme in which French would pose as a contractor, meet with potential clients, secure a deposit on the contract, and then never return to perform—or in some cases, finish—the work agreed upon. Warrants were issued for French and his co-defendant based on the complaint. French was returned to Milwaukee County on the warrant in August 2019.

French ultimately agreed to resolve his case through a plea agreement. In exchange for French's guilty pleas, the State would reduce the fraudulent writings charges to two counts of theft by contractor, reducing the offense level from a Class H felony to a Class A misdemeanor.<sup>2</sup> The State also agreed to recommend a global sentence that included fifteen months of initial confinement that would be consecutive to his other Wisconsin sentences, but concurrent with his Florida sentences. The circuit court conducted a plea colloquy and accepted French's guilty pleas. The matter then proceeded immediately to sentencing. The circuit court imposed fifteen

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

<sup>2</sup> The remaining original charges were a Class H felony and a Class I felony.

months of initial confinement and fifteen months of extended supervision for each felony and two hundred days of imprisonment for each misdemeanor. The circuit court structured the sentences as requested: concurrent with each other, consecutive to a series of Dane County sentences, and concurrent with sentences imposed in Broward County, Florida. French later stipulated to restitution.

The first potential issue counsel discusses is whether French should be allowed to withdraw his pleas as not knowing, intelligent, and voluntary. Our review of the record—including the plea questionnaire and waiver of rights form, addendum, attached jury instructions that were initialed by French, 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 *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. These obligations exist specifically to help ensure the validity of any plea. We thus agree with appellant counsel’s conclusion in the no-merit report that there is no arguable merit to seeking plea withdrawal based on a claim that the circuit court failed to properly conduct a plea colloquy or based on a claim that French’s pleas were anything other than knowing, intelligent, and voluntary.

The other issue counsel discusses is whether “any errors occurred at sentencing.” Sentencing is a matter for the circuit court’s 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. See *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. It must also determine which objective or objectives are of greatest importance. See *Gallion*, 270 Wis. 2d 535, ¶41. In seeking to fulfill the sentencing objectives,

the circuit court should consider primary factors including the gravity of the offense, the character of the offender, and the protection of the public, and the circuit court 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.*

Our review of the record confirms that the court appropriately considered relevant sentencing objectives and factors. The resulting thirty-month sentence imposed is well within the potential eleven-year maximum 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). In addition, trial counsel told the circuit court that “this is a joint recommendation and that is the same sentence that we are asking for as well.” Because French joined the State’s sentence recommendation, he cannot challenge it on appeal. *See State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989). Thus, there is no arguable merit to a challenge to the circuit court’s exercise of sentencing discretion.

There is, however, a clerical error in the misdemeanor portion of the judgment of conviction. It states that French’s sentence on Count 3 is 300 days, but the circuit court imposed only 200 days on that count.<sup>3</sup> We therefore direct that, upon remittitur, the judgment of conviction be amended to reflect the 200-day sentence actually imposed on Count 3. *See State v. Prihoda*, 2000 WI 123, ¶¶26-27, 239 Wis. 2d 244, 618 N.W.2d 857.

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<sup>3</sup> “Count 1 will be a 200-day sentence concurrent with Count 2. Count 3, similarly, 200-day sentence concurrent to Counts 1 and 2.”

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

Upon the foregoing, therefore,

IT IS ORDERED that, upon remittitur, the judgment of conviction shall be modified as described herein.

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

IT IS FURTHER ORDERED that Attorney Vicki Zick is relieved of further representation of French in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*