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DISTRICT I

November 23, 2021

To:

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Milwaukee County
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Jared J. Lanier-Cotton 675707
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You are hereby notified that the Court has entered the following opinion and order:

2021AP627-CRNM State of Wisconsin v. Jared J. Lanier-Cotton (L.C. # 2018CF2435)

Before Brash, C.J., Donald, P.J., and Dugan, J.

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).

Jared J. Lanier-Cotton appeals a judgment of conviction entered upon his guilty pleas to five felonies: delivery of not more than three grams of heroin; two counts of delivery of fentanyl; possession of at least five grams but not more than fifteen grams of cocaine with intent to deliver, while armed with a dangerous weapon, and as a party to a crime; and possession of fentanyl with intent to deliver. His appellate counsel, Attorney Michael S. Holzman, filed a no-merit report

pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2019-20).[1] Lanier-Cotton did not file a response. Based upon our review of the no-merit report and 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.

The State alleged in a criminal complaint that Lanier-Cotton sold controlled substances to an undercover officer on four occasions during the period from April 25, 2018, through May 17, 2018. All of the transactions occurred in an alley behind Lanier-Cotton's home in the 4600 block of North 30th Street in Milwaukee. On May 24, 2018, police executed a search warrant at the home and arrested Lanier-Cotton while he was leaving to conduct another transaction with the officer. During the search, police found a hydraulic press of a kind commonly used to process kilos of controlled substances, $2,922 in cash, more than twelve grams of cocaine, and assorted firearms, among other items. The State charged Lanier-Cotton with multiple violations of WIS. STAT. ch. 961, the Uniform Controlled Substances Act.[2]

Lanier-Cotton decided to resolve the charges with a plea agreement. On November 9, 2018, the State filed an amended information, Lanier-Cotton pled guilty as charged, and the State agreed to recommend twelve years of initial confinement and five years of extended supervision.

While Lanier-Cotton was awaiting sentencing in this case, he proceeded to trial in a second case, Milwaukee County Circuit Court case No. 2018CF2604. The jury in that matter

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

[2] The complaint also included charges against two other individuals in addition to Lanier-Cotton. The charges against the other individuals are not at issue here.

found him guilty of one count of substantial battery, one count of intimidating a witness, and one count of battering a witness, all as a party to a crime, and the jury also found him guilty of felony bail jumping. On December 21, 2018, the circuit court held a joint sentencing hearing in the instant case and case No. 2018CF2604.

In the instant case, Lanier-Cotton faced: (1) for delivery of three grams or less of heroin, as charged in count 1 of the amended information, twelve years and six months of imprisonment and a $25,000 fine, *see* WIS. STAT. §§ 961.41(1)(d)1., 939.50(3)(f) (2017-18); (2) for each of the two counts of delivery of fentanyl as charged in counts two and three of the amended information, fifteen years of imprisonment and a $50,000 fine, *see* §§ 961.41(1)(a), 939.50(3)(e) (2017-18); (3) for possession with intent to deliver more than five but not more than fifteen grams of cocaine as a party to a crime and while using a dangerous weapon, as charged in count five of the amended information, twenty years of imprisonment and a $50,000 fine, *see* WIS. STAT. §§ 961.41(1m)(cm)2., 939.50(3)(e), 939.63(1)(b), 939.05 (2017-18); and (4) for possession with intent to deliver fentanyl as charged in count thirteen of the amended information, fifteen years of imprisonment and a $50,000 fine, *see* §§ 961.41(1m)(a), 939.50(3)(e) (2017-18).

The circuit court pronounced sentence as follows:

> So then all the counts will be consecutive.... 18CF2435, count one 18 months of initial confinement, 18 months of extended supervision ... consecutive to count two, 18 months initial confinement, 18 months of extended supervision, consecutive to count three, 24 months of initial confinement, 18 months of extended supervision, consecutive to count five, 24 months of initial confinement, 18 months of extended supervision, consecutive to count 13, 24 months of initial confinement, 24 months of extended supervision.
>
> That will run concurrent [sic] to 18CF2604: [c]ount one, 18 months of initial confinement, 18 months of extended

> supervision, consecutive to count two, 60 months of initial confinement, 60 months of extended supervision, consecutive to count three, 12 months of initial confinement, 12 months of extended supervision, consecutive to count 14, 12 months of initial confinement, 12 months of extended supervision.
>
> My math and my intent was 17 and a half years of initial confinement.

The circuit court found Lanier-Cotton eligible for the challenge incarceration program and the Wisconsin substance abuse program after serving a total of twelve years of initial confinement, and the circuit court also ordered that Lanier-Cotton receive 136 days of sentence credit against his sentence for count one in the instant matter.

In postconviction proceedings, Lanier-Cotton pursued a claim for an additional day of sentence credit. The circuit court granted the motion. He appeals.[3]

In the no-merit report, appellate counsel examines whether Lanier-Cotton could pursue an arguably meritorious challenge to his guilty pleas. We are satisfied that appellate counsel properly analyzed this issue. The circuit court conducted a plea colloquy that complied with the circuit court's obligations when accepting a plea other than not guilty. *See* WIS. STAT. § 971.08; ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The record—including the plea questionnaire and waiver of rights form and addendum, the jury instructions that Lanier-Cotton initialed describing the elements of the crimes to which he pled guilty, and the plea hearing transcript—demonstrates

[3] Lanier-Cotton also filed a separate appeal of the judgment of conviction in case No. 2018CF2604. That matter is under consideration by this court in appeal No. 2020AP1119-CR. We do not address the merits of that matter in the instant proceeding.

that Lanier-Cotton entered his guilty pleas knowingly, intelligently, and voluntarily. Pursuit of this issue would lack arguable merit.

We next consider whether Lanier-Cotton could pursue an arguably meritorious challenge to his sentences in this case. Sentencing lies within the circuit court's discretion, and our review is limited to determining if the circuit court erroneously exercised its discretion.[4] *See* ***State v. Gallion***, 2004 WI 42, ¶17, 270 Wis. 2d 535, 678 N.W.2d 197. "When the exercise of discretion has been demonstrated, we follow a consistent and strong policy against interference with the discretion of the [circuit] court in passing sentence[.]" ***State v. Stenzel***, 2004 WI App 181, ¶7, 276 Wis. 2d 224, 688 N.W.2d 20.

The circuit court must "specify the objectives of the sentence on the record. These objectives include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." ***Gallion***, 270 Wis. 2d 535, ¶40. In seeking to fulfill the sentencing objectives, the circuit court must consider the primary sentencing factors of "the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The circuit court may also consider a wide range of other factors concerning the defendant, the offenses, and the community. *See* ***id.*** The circuit court has discretion to determine both the

[4] Lanier-Cotton filed a motion on his own behalf for sentence modification in this case soon after sentencing. The circuit court denied the motion without considering the merits because Lanier-Cotton had postconviction counsel. No arguably meritorious basis exists to challenge that decision. *See* ***State v. Redmond***, 203 Wis. 2d 13, 21, 552 N.W.2d 115 (Ct. App. 1996) (a defendant may proceed either with counsel or *pro se*). We add that Lanier-Cotton sought relief from his sentences on the ground that the circuit court erroneously exercised its sentencing discretion. We consider here whether that issue has arguable merit.

factors that are relevant in imposing a sentence and the weight to assign to each relevant factor. *See* ***Stenzel***, 276 Wis. 2d 224, ¶16.

Here, the circuit court identified punishment and community protection as the primary sentencing goals, and the circuit court discussed appropriate factors that it viewed as relevant to achieving those goals. The circuit court found that the crimes were very serious, emphasizing that they involved a substantial amount of controlled substances and numerous deliveries. The circuit court considered Lanier-Cotton's character as largely mitigating, particularly noting his lack of a prior criminal record and his intelligence. In considering the need to protect the public, the circuit court found that Lanier-Cotton was part of a "sophisticated large scale operation" for "pumping out drugs" that are "tearing the community apart." The circuit court therefore found that Lanier-Cotton should receive a lengthy prison sentence.

The circuit court appropriately considered a probationary disposition. *See* ***Gallion***, 270 Wis. 2d 535, ¶25. The circuit court concluded, however, that probation would unduly depreciate the gravity of Lanier-Cotton's crimes. The circuit court added that Lanier-Cotton had the potential to be a productive member of the community in the future and expressed the hope that he would take advantage of the programs available in the prison system.

The circuit court identified the factors it considered in fashioning an appropriate disposition. The factors were proper and relevant. *See* ***id.***, ¶¶41-43 & n.11. Moreover, the aggregate term of seventeen years of imprisonment that the circuit court imposed in this case was significantly less than the aggregate of eighty-two and one-half years of imprisonment and $225,000 in fines that Lanier-Cotton faced upon conviction of the five offenses at issue here. Lanier-Cotton therefore cannot pursue an arguably meritorious claim that his sentences in this

case are excessive or shocking. *See* ***State v. Mursal***, 2013 WI App 125, ¶26, 351 Wis. 2d 180, 839 N.W.2d 173. We conclude that a challenge to the circuit court's exercise of sentencing discretion would be frivolous within the meaning of ***Anders***.

We next conclude that Lanier-Cotton could not mount an arguably meritorious challenge to the circuit court's decision delaying his eligibility for the challenge incarceration program and the Wisconsin substance abuse program until he has served twelve years of initial confinement. Both the challenge incarceration program and the Wisconsin substance abuse program are prison treatment programs, and when an inmate successfully completes either program, his or her remaining initial confinement time is converted 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 sentencing discretion when determining both a defendant's eligibility for these programs and the date that the defendant's eligibility may begin. *See* WIS. STAT. § 973.01(3g)-(3m);[5] ***State v. White***, 2004 WI App 237, ¶¶2, 6-10, 277 Wis. 2d 580, 690 N.W.2d 880. 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.

Here, the totality of the circuit court's sentencing remarks reflects that the circuit court intended to afford Lanier-Cotton a chance to benefit from the opportunities that the prison

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[5] 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 Wisconsin Statutes. *See* WIS. STAT. §§ 302.05; 973.01(3g).

treatment programs offer, but also intended to ensure that he spend sufficient time in prison to satisfy the sentencing goals. Further pursuit of this issue would lack arguable merit.

Finally, we have considered whether Lanier-Cotton could pursue an arguably meritorious claim for modification of the judgment of conviction because it states that his sentences in this case are "consecutive to any other sentence" but the circuit court stated that the sentences are "concurrent to 2018CF2604." We conclude that he could not pursue such a claim. It is clear from the entirety of the sentencing transcript that the circuit court merely tripped over its words. The circuit court began its sentencing pronouncements by stating: "all the counts will be consecutive." At the conclusion of the pronouncements, the circuit court stated that its intent was to impose an aggregate of seventeen and one-half years of initial confinement, a total reached by adding together the nine terms of initial confinement imposed in the two cases. The circuit court subsequently asked the parties "to double-check those numbers" and reiterated that the intended aggregate period of initial confinement was seventeen and one-half years. In light of the foregoing, we conclude that Lanier-Cotton cannot pursue an arguably meritorious claim that the circuit court ordered him to serve his sentences in this case concurrently with his sentences in case No. 2018CF2604. Rather, the circuit court ordered, and the judgment of conviction correctly reflects, that he serve his sentences in this case—case No. 2018CF2435—consecutive to any other sentence. *See* ***State v. Upchurch***, 101 Wis. 2d 329, 335-36, 305 N.W.2d 57 (1981) (explaining that a sentencing is not a game in which a circuit court's misstatement may result in a windfall to the defendant).

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 Michael S. Holzman is relieved of any further representation of Jared J. Lanier-Cotton 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