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DISTRICT I

December 7, 2021

To:

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Circuit Court Judge
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Lauren Jane Breckenfelder
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James Dontrell Pinkin 404089
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You are hereby notified that the Court has entered the following opinion and order:

2021AP222-CRNM State of Wisconsin v. James Dontrell Pinkin (L.C. # 2018CF4486)

Before Brash, C.J., Donald, P.J., and White, 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).

James Dontrell Pinkin appeals from a judgment of conviction, following a guilty plea, to one count of attempted arson of a building. His appellate counsel, Lauren Breckenfelder, has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)¹ and *Anders v. California*, 386 U.S. 738 (1967). Pinkin received a copy of the report and was advised of his right to respond, but has not done so. We have independently reviewed the record and the no-merit

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

report as mandated by *Anders*. We conclude that there are no issues of arguable merit that could be pursued on appeal. We, therefore, summarily affirm.

On September 20, 2018, the State charged Pinkin with one count of attempted arson of a building. According to the criminal complaint, on September 15, 2018, a Milwaukee police sergeant observed Pinkin in an alley attempting to light a mattress on fire with a lighter. The mattress and other flammable materials were adjacent to a garage door. Pinkin attempted to light the mattress on fire multiple times. Ultimately, the sergeant intervened and Pinkin threw the lighter on the mattress.

Following his arrest, Milwaukee police conducted an interview with Pinkin. Trial counsel filed a motion to suppress statements Pinkin made to police, arguing that Pinkin did not voluntarily, knowingly, and intelligently waive his *Miranda*² rights. Trial counsel acknowledged that the police accurately read Pinkin his rights, but argued that he did not understand them due to his mental health issues. The circuit court denied the motion.

Pinkin subsequently entered a guilty plea to the sole count in the criminal complaint. Pursuant to the plea agreement, the State read in several arson-related offenses. The circuit court conducted a colloquy with Pinkin and accepted his guilty plea. Pursuant to the plea negotiations, Pinkin signed a plea questionnaire/waiver of rights form. The circuit court sentenced Pinkin to five years of initial confinement and seven years and six months of extended supervision. The circuit court found Pinkin eligible for the Substance Abuse Program.

² See *Miranda v. Arizona*, 384 U.S. 436 (1966).

Counsel's no-merit report addresses three issues: (1) whether the circuit court erroneously denied Pinkin's motion to suppress statements made to police on the grounds that Pinkin did not knowingly, voluntarily, and intelligently waive his rights under *Miranda*; (2) whether the circuit court properly accepted Pinkin's guilty plea; and (3) whether the circuit court erroneously exercised its sentencing discretion.

In most instances, a defendant who pleads guilty waives all nonjurisdictional defects and defenses. See *County of Racine v. Smith*, 122 Wis. 2d 431, 434, 362 N.W.2d 439 (Ct. App. 1984). WISCONSIN STAT. § 971.31(10) makes an exception to this rule, however, and allows appellate review of an order denying a motion to suppress evidence. *Smith*, 122 Wis. 2d at 434-35. When this court reviews a circuit court's ruling on a motion to suppress, we uphold that court's factual findings unless they are clearly erroneous. See *State v. Patton*, 2006 WI App 235, ¶7, 297 Wis. 2d 415, 724 N.W.2d 347. We review the application of constitutional principles to those findings *de novo*. See *State v. Casarez*, 2008 WI App 166, ¶9, 314 Wis. 2d 661, 762 N.W.2d 385.

When determining whether a confession or admission is voluntary, we look to the totality of circumstances. *State v. Schneidewind*, 47 Wis. 2d 110, 117, 176 N.W.2d 303 (1970). In order to find a defendant's statement involuntary, "there must be some affirmative evidence of improper police practices deliberately used to procure a confession." *State v. Clappes*, 136 Wis. 2d 222, 239, 401 N.W.2d 759 (1987). In assessing the totality of circumstances, we must balance the personal characteristics of the defendant against any pressures imposed by the police. See *id.* at 236. The relevant personal characteristics of the defendant include that person's age, education and intelligence, physical and emotional condition, and prior experience with the police. *Id.*

It is undisputed that police officers read Pinkin his *Miranda* rights and that the issue before the circuit court was whether Pinkin's statements were knowing, voluntary, and intelligent. After reviewing the interrogation tape and the interrogation transcript, the circuit court stated that officers provided "one of the better explanations given to a defendant." The circuit court noted that officers reviewed Pinkin's *Miranda* rights individually and asked Pinkin to explain the rights back to them, which Pinkin did correctly. The circuit court also noted that the officers were "sensitive" to Pinkin's mental health issues and wanted to make sure that Pinkin understood his *Miranda* rights. After considering the totality of the circumstances, the circuit court determined that Pinkin "had the required level of comprehension to understand and waive his *Miranda* rights" and denied the motion. Based upon our independent review of the record before us, we conclude that there is no arguable merit to a claim that the circuit court erred by finding that Pinkin knowingly, intelligently, and voluntarily waived his *Miranda* rights.

Next, the no-merit report addresses whether the circuit court properly accepted Pinkin's guilty plea. Our review of the record—including the plea questionnaire and waiver of rights form, the jury instructions, and the 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. Although the circuit court did not specifically address whether any threats or promises were made to Pinkin prior to entering his plea, Pinkin signed the plea questionnaire which includes the statement, "I have not been threatened or forced to enter this plea. No promises have been made to me other than those contained in the plea agreement." At the plea hearing, counsel informed the circuit court that she spent "extra time" explaining the plea questionnaire to Pinkin and believed that he understood its terms. We agree with appellate

counsel's conclusion in the no-merit report that there is no arguable merit to seeking plea withdrawal based on a claim that Pinkin's plea was anything other than knowing, intelligent, and voluntary.

With regard to the circuit court's sentencing decision, we note that 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 several primary factors, including the gravity of the offense, the character of the offender, and the protection of the public, as well as additional factors it may wish to consider. *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. Specifically, the circuit court focused on the danger Pinkin posed by repeatedly lighting fires and his rehabilitative needs. The resulting sentence was within the potential 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). Therefore, there would be no arguable merit to a challenge to the 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 Lauren Breckenfelder is relieved of further representation of Pinkin 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