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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

February 1, 2022

To:

Hon. Frederick C. Rosa
Circuit Court Judge
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Winn S. Collins
Electronic Notice

John D. Flynn
Electronic Notice

Jay R. Pucek
Electronic Notice

Joseph D. Marion 638434
Kettle Moraine Correctional Inst.
P.O. Box 282
Plymouth, WI 53073-0282

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

2020AP956-CRNM State of Wisconsin v. Joseph D. Marion (L.C. # 2017CF5687)

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).

Joseph D. Marion appeals from a judgment convicting him of two counts of fleeing or eluding an officer, one count of possession of heroin with intent to deliver (more than three but less than ten grams), and one count of possession of cocaine with intent to deliver (more than fifteen but less than forty grams). He also appeals an order denying his motion for resentencing. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20) and

Anders v. California, 386 U.S. 738 (1967).¹ Marion received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the no-merit report and an independent review of the record as mandated by *Anders*, we conclude that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

On December 13, 2017, the State filed a criminal complaint charging Marion with five counts of fleeing or eluding a traffic officer, one count of possession of heroin with intent to deliver, and one count of possession of cocaine with intent to deliver. The complaint alleged that on five occasions between February 2017 and December 2017, Marion fled from the police after he was pulled over for various traffic violations. On each occasion, Marion initially pulled his car over when the officers activated their emergency lights. After the officers exited their squad car and approached his vehicle, Marion provided the officers with his instructional driving permit. Shortly thereafter, however, Marion would abruptly accelerate and drive away from the scene.

The complaint further alleged that no chases occurred during any of the first four incidents. During the fifth incident, however, the police deployed stop sticks which disabled Marion's car. After his car came to a stop, Marion fled the scene on foot but was located and arrested nearby. Following his arrest, officers discovered multiple plastic bags containing crack

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

The no-merit report was filed by Attorney Leon W. Todd. On January 12, 2021, Attorney Jay Pucek was substituted as counsel for Marion and now represents Marion in this appeal.

and powder cocaine and one bag containing heroin in Marion's pants. In the car, officers also found a digital scale, a handgun, and twenty Oxycodone pills.

Marion pled guilty to two of the fleeing counts and both counts of possession with intent to deliver controlled substances. Pursuant to the plea negotiations, the State agreed to move to dismiss and read in the remaining charges and recommend a global sentence of ten years of initial confinement and six years of extended supervision. The circuit court accepted Marion's pleas and subsequently ordered him to serve a total of six years of initial confinement and five years of extended supervision, to run consecutively to a sentence imposed in Ozaukee County.²

In its sentencing remarks, the circuit court explained that while it normally would have accepted the State's recommendation, in this instance, it did not think ten years of confinement was necessary given that Marion had already received a substantial sentence in a separate case in Ozaukee County. After imposing sentence, the circuit court stated: "I didn't order the longer sentence requested by the State because it seems to me even with all the things you did in the two counties 16 years of initial confinement is a lot of time for anybody and that's more than enough here."

Marion filed a postconviction motion seeking resentencing. He argued that the court erroneously exercised its discretion at sentencing by imposing a global term of confinement that was longer than the minimum amount necessary in this case. He highlighted that in its sentencing remarks, the court specifically stated that the term of confinement it imposed was

² The State explained at sentencing that "[m]ere days after posting bail in this case" Marion engaged in controlled buys with an undercover agent in Ozaukee County and was sentenced to a total of ten years of initial confinement for two counts of delivery of heroin and one count of felony bail jumping in that case.

“more than enough.” According to Marion, the circuit court erroneously exercised its discretion by failing to identify any sentencing objectives and by failing to explain why the term of confinement it imposed was the minimum amount of confinement that was consistent with the court’s sentencing goals or the primary sentencing factors.

In its decision denying Marion’s postconviction motion, the circuit court explained that the global sentence “was intended as the punishment for multiple fleeing incidents and drug crimes.” The circuit court continued:

During its rendition of sentence, the court considered the seriousness of the offenses, the defendant’s character and the need to protect the public. With regard to the fleeings, the defendant drove off *five times* over a ten-month period. The court also considered the dangerous nature of the drugs found in his possession—heroin and cocaine—and the devastating impact these substances have had in our community, specifically in terms of being implicated in the overwhelming majority of overdose deaths. The court accepted that the defendant’s actions were fueled by his own addiction, but that factor did not significantly mitigate the seriousness of his conduct or the risk he presented to the community.

According to the circuit court, “[t]he amount of confinement time imposed in Ozaukee County was punishment for the defendant’s conduct in that county; additional confinement time was necessary to punish him for the offenses he committed in this county.” The circuit court also noted: “The statement, ‘that’s more than enough here,’ was merely a turn of phrase which was not intended to communicate that 16 years was more than enough time than was necessary but rather that *no more than* 16 years was necessary.”

The no-merit report addresses the potential issues of whether Marion’s pleas were knowingly, intelligently, and voluntarily entered, whether the sentence was the result of an erroneous exercise of discretion, and whether the circuit court erred when it denied Marion’s

postconviction motion for resentencing. The plea colloquy, when augmented by the plea questionnaire and waiver of rights form, the addendum, and the applicable jury instructions, demonstrate Marion's understanding of the information he was entitled to and that his plea was knowingly, voluntarily, and intelligently entered. *See State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986); *see also State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987).

Additionally, the record reveals that the circuit court considered and applied the relevant sentencing factors. The no-merit report explains that while the circuit court did not clearly state its objectives at sentencing, it clarified in its postconviction decision that its intent was to punish Marion, to deter him and others from engaging in similar behavior, and to protect the community. *See State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994) (explaining that a postconviction motion challenging a sentence affords the circuit court an opportunity to further explain the sentencing rationale). This court is satisfied that the no-merit report properly concludes the issues it raises are without merit and will not discuss them further.

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the judgment, and discharges appellate counsel of the obligation to represent Marion further in this appeal.

Upon the foregoing, therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See WIS. STAT. RULE 809.21.*

IT IS FURTHER ORDERED that Attorney Jay Pucek is relieved of further representation of Marion 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