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DISTRICT I

April 5, 2022

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
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Lamont E. Wallace 685435
Green Bay Correctional Institution
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You are hereby notified that the Court has entered the following opinion and order:

2021AP123-CRNM State of Wisconsin v. Lamont E. Wallace (L.C. # 2017CF4074)

Before Brash, C.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).

Lamont E. Wallace appeals from a judgment of conviction, following a guilty plea, of first-degree reckless injury with the use of a dangerous weapon. His appellate counsel, Jay R. Pucek, 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). Wallace received a copy of the report, was advised of his right to file a response, and has responded. We have independently reviewed the record, the no-merit

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

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

The State originally charged Wallace with one count of attempted first-degree intentional homicide for the shooting of K.D.B. According to the complaint, Wallace shot K.D.B. at close range multiple times at K.D.B.'s home. K.D.B. survived the shooting and identified Wallace as the shooter. The case remained pending for two years due to a change in counsel and two competency hearings, but ultimately the parties reached an agreement wherein Wallace would plead guilty to an amended charge of first-degree reckless injury with the use of a dangerous weapon. The agreement left both parties free to argue at sentencing.

At the plea hearing, the circuit court conducted a colloquy with Wallace and accepted his guilty plea. The circuit court sentenced Wallace to eighteen years of initial confinement and ten years of extended supervision with 764 days of sentence credit.

The no-merit report addresses two issues: (1) whether the circuit court properly accepted Wallace's guilty plea, and (2) whether the circuit court erroneously exercised its sentencing discretion. In his response, Wallace challenges his sentence, arguing that the circuit court failed to adequately explain its reasoning, placed undue emphasis on his character, and issued a harsh and excessive sentence. Wallace filed an additional response, arguing, as best as this court can

discern, that his trial counsel failed to make an appropriate argument at sentencing.² He also argues that his appellate counsel erroneously refused to argue that Wallace is entitled to sentence modification based on newly discovered evidence on the grounds that Wallace was sexually assaulted as a child.

Our review of the record—including the plea questionnaire and waiver of rights form, the addendum, the jury instructions (initialed by Wallace), 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. Indeed, the circuit court was thorough in its questioning, confirmed Wallace’s understanding of the proceedings multiple times, and thoughtfully discussed the elements of the offense and the facts supporting the elements with Wallace. We therefore 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 Wallace’s pleas were 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,

² Wallace’s argument is unclear. He argues “my trial attorney did not respond to the DA when she made [a] recommendation after I ple[d] guilty to leave it up to the judge.” This court interprets Wallace’s argument as a complaint that trial counsel did not adequately oppose the State’s sentencing recommendation. The record does not support this argument. At sentencing, trial counsel discussed Wallace’s state of mind at the time of the shooting, Wallace’s past trauma, Wallace’s acceptance of responsibility, and Wallace’s understanding that “it needs to be a lengthy prison term.” Trial counsel then went on to recommend a sentence shorter than that recommended by the State. Accordingly, we disagree that anything pertaining to trial counsel’s performance at sentencing presents an issue of arguable merit for appeal.

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, and it may consider additional factors. *See State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695.

Wallace's arguments focus on the circuit court's sentencing decision. Our review of the record confirms that the circuit court appropriately considered relevant sentencing objectives and factors. Contrary to Wallace's assertion, the circuit court was thorough in its explanation, stating that even if Wallace felt threatened by the victim, Wallace was physically larger and stronger than the victim and did not have to resort to shooting him multiple times. To the extent Wallace complains that the circuit court excessively focused on his character, we note first that the weight to be given to each factor is committed to the circuit court's discretion. *See id.* Moreover, the circuit court's discussion of Wallace's character was mostly positive. The circuit court expressed sympathy for Wallace's traumatic upbringing, commended Wallace for accepting responsibility for his actions, acknowledged Wallace's lack of criminal history, and encouraged Wallace to pursue vocational training or other educational interests. We also disagree that Wallace's sentence is unduly harsh and excessive. Wallace pled guilty to a Class D felony with an enhancer for using a dangerous weapon; thus, he was facing a maximum prison sentence of thirty years, bifurcated as twenty years of initial confinement and ten years of extended supervision. WIS. STAT. §§ 940.23(1)(a), 939.50(3)(d), 939.63(1)(b), 973.01. The sentence rendered 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). Accordingly, we reject Wallace's arguments about his sentence and agree with appellate counsel that there would be no arguable merit to a claim that the circuit court erroneously exercised its sentencing discretion in any manner.

Lastly, Wallace contends that the fact that he was sexually assaulted as a child is a new factor warranting sentence modification and that appellate counsel unreasonably refused to raise this issue on appeal. Specifically, Wallace claims that he shot K.D.B. because he thought K.D.B. was going to rape him, triggering a traumatic response that led him to shoot K.D.B. multiple times. A new factor for sentence modification is "a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because ... it was unknowingly overlooked by all of the parties." *See State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted). Not only were Wallace's prior assaults known to him at the time of sentencing, they were known to the circuit court as well. Although the circuit court did not expressly discuss the assaults, trial counsel informed the court that Wallace had a history of being victimized. The circuit court also had access to Wallace's NGI report, which states that Wallace acknowledged that he was molested as a child and may have been triggered by his trauma. Moreover, Wallace himself wrote a letter to the circuit court early in the proceedings explaining that he was molested three times as a child and that he shot the victim out of fear that K.D.B. was going to rape him. Accordingly, Wallace's prior sexual assaults do not constitute a new factor for purposes of sentence modification.

Our review of the record discloses no other potential issues for appeal. This court has reviewed and considered the issues raised by Wallace. To the extent we did not specifically address all of them, this court has concluded that they lack sufficient merit to warrant individual attention. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Wallace further in this appeal.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Jay R. Pucek is relieved from further representing Lamont E. Wallace in this appeal. *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